Public Utilities

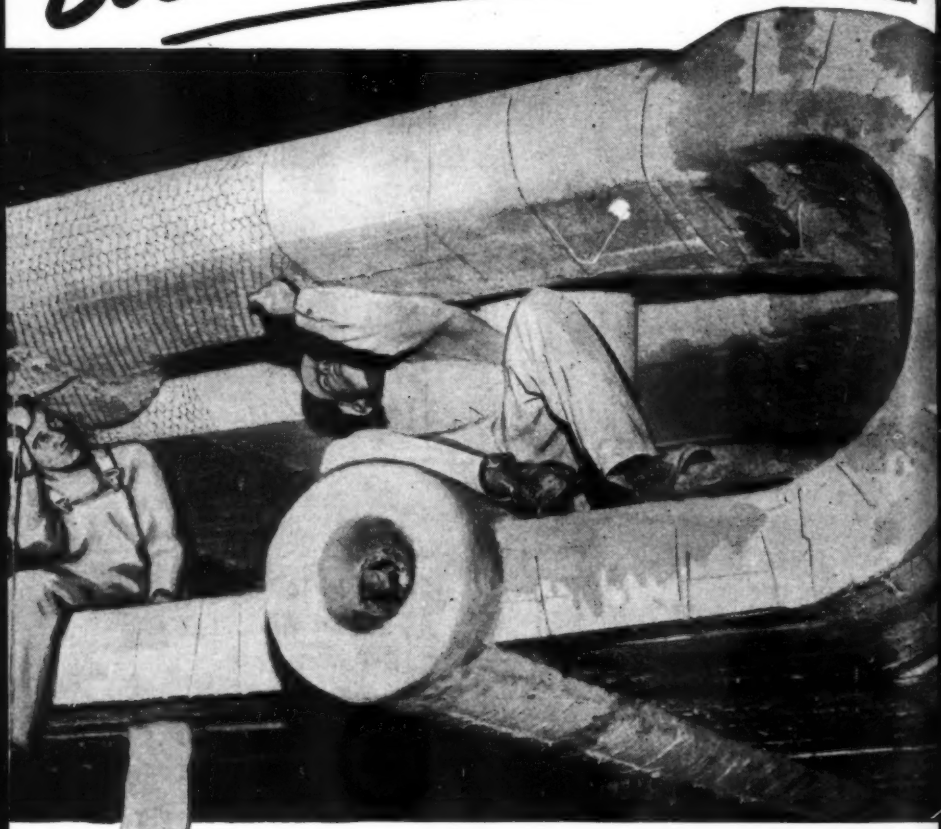
FORTNIGHTLY

JULY • 5 • 1945

ISSUED • IN • COMMEMORATION OF • THE • THIRTIETH • ANNIVERSARY • OF • THE • ESTABLISHMENT OF • PUBLIC • UTILITIES • REPORTS AND • DEDICATED • TO • THE PRINCIPLE • OF • PUBLIC • SERVICE REGULATION 1915 • 1945

PUBLIC UTILITIES REPORTS, INC.
PUBLISHERS

Bosses of the Btu.



ght fits in
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other invest-
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. . . their skill is your protection aga the pitfalls of poorly applied insulat

PITFALLS in insulation application are many —and costly. Costly in money through wasted fuel . . . costly in operating efficiency through inadequate heat control.

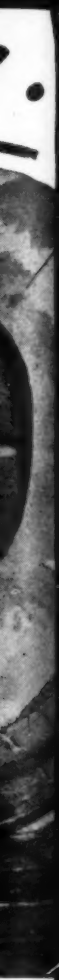
To assure proper application of its insulating materials, Johns-Manville recommends the engineering skill and expert workmanship of organizations especially set up for this work. In some areas the groups are Johns-Manville's own construction forces. In others, they are J-M Technical Service Units—contracting companies carefully selected for their integrity and background in this field. Each of these organizations is respons handling all details of an insulation job— plete carry-through from planning to appl

Through generations of research, Manville has developed a line of insulatio spans the entire range of industrial tempe and fits every service requirement.

* * *

If you have an insulation problem, why not call on J-M for the solution? Write Johns-Manville, 22 East 40th St., New York 16, N. Y.

JOHNS-MANVILLE *First in* **INSULATI**



Certified by A. G. A. Testing Laboratory. Sizes ¼" up.

Gas Control = Gas Economy

NOW as never before, gas fuel of any type must be conserved. All consumers, appliance manufacturers and public service corporations are under strict obligation to secure top efficiency and economy from their gas-burning appliances.

One effective means of accomplishing this is by the use of a reliable gas pressure regulator on furnaces, boilers, water heaters, kitchen ranges, and other home and industrial appliances. On a control device so strategic as a regulator, complete dependability is a necessity. On Barber Regulators the bodies, working parts, springs and diaphragms are the finest obtainable. Unusually sensitive reaction to pressure drop is assured. The appearance of these regulators harmonizes with modern streamline equipment.

The use of Barber Regulators on appliances you sell, make, or sponsor, is not only evidence of quality equipment, but also a symbol of your compliance with our national conservation program.

Descriptive folders supplied free for your trade. Write for Catalog and Prices on Barber Conversion and Appliance Burners and Regulators.

THE BARBER GAS BURNER CO., 3704 Superior Avenue, Cleveland 14, Ohio

BARBER GAS PRESSURE REGULATORS

Barber Burners For Warm Air Furnaces, Steam and Hot Water Boilers and Gas Appliances

Editor—HENRY C. SPURR
Managing Editor—FRANCIS X. WELCH
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Financial Editor—OWEN ELY
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Public Utilities Fortnightly

VOLUME XXXVI *July 5, 1945* NUMBER 1

Contents of previous issues of PUBLIC UTILITIES FORTNIGHTLY *can be found by consulting the "Industrial Arts Index" in your library.*

¶ *This magazine is an open forum for the free expression of opinion concerning public utility regulation and allied topics. It is supported by subscription and advertising revenue; it is not the mouthpiece of any group or faction; it is not under the editorial supervision of, nor does it bear the endorsement of, any organization or association. The editors do not assume responsibility for the opinions expressed by its contributors.*

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PUBLIC UTILITIES FORTNIGHTLY, a magazine dealing with the problems of utility regulation and allied topics, including also decisions of the regulatory commissions and courts, preprinted from *Public Utilities Reports, New Series*, such Reports being supported in part by those conducting public utility service, manufacturers, bankers, accountants, and other users. Entered as second-class matter April 29, 1915, under the Act of March 3, 1879. Entered at the Post Office at Baltimore, Md., Dec. 31, 1936; copyrighted, 1945 by Public Utilities Reports, Inc. Printed in U. S. A.

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Pages with the Editors

THIRTY years in the life span of a single generation of business or professional association is a considerable period for any undertaking. The publishing effort of Public Utilities Reports has been going on for that period, and this issue commemorates the anniversary.

DESPITE the recognition which "PUR" has won from bench and bar, and from other professional specialists in the field of utility regulation, it would not be realistic to assume that many of our readers would know, offhand, that we had been in business for thirty years, if it were not called to their attention. And inasmuch as a publication's commemoration of an anniversary comes close to "throwing a party" for one's self, perhaps it is in order to give a brief outline of the genesis of PUR, starting with its reporting system in 1915.

THE opening article in this issue, by HENRY C. SPURR of Rochester, New York, editor in chief of all PUR publications, sets forth the background of the regulatory picture upon which the PUR publication effort has been continuously projected for the past thirty years. The first volume of PUR, published in 1915, carried the name of HENRY C. SPURR as special editor in charge, and A. S. Hills, formerly of the legal department of the American Telephone and Telegraph Company, as special legal analyst. PUR has been favored through the years in having these two "charter members" of the editorial board continue in the active direction of its work. MR. SPURR, as already mentioned, has for many years been the editor in chief, while A. S. Hills, for many years general manager of Public Utilities Reports, Inc., is today its vice president in charge of the Washington office.

C. W. KELLOGG

Postwar public service by the electric industry will be truly a service to the public.

(SEE PAGE 19)

E. HOLLEY POE

Sound utilization and good conservation are the same for the gas industry.

(SEE PAGE 25)

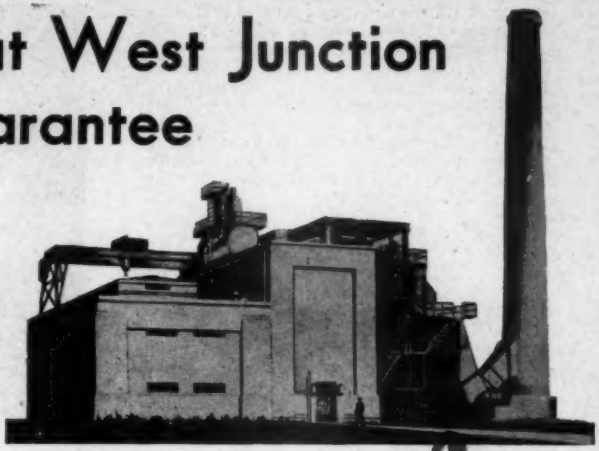
COMMEMORATING this "pearl" anniversary, we are privileged to present in this issue articles by outstanding spokesmen for the state commissions and for the three branches of the public utility family.

IN behalf of the state commissions we have a forward-looking article from the pen of none other than the president of the National Association of Railroad and Utilities Commissioners, JOHN D. BIGGS, more familiarly known to his many friends as JUDGE BIGGS. Born in Bond county, Illinois, in 1888, JUDGE BIGGS attended school and college in Greenville, Illinois, and graduated from Whipple Academy in Jacksonville, Illinois, in 1907, as well as the Uni-

Riley Unit at West Junction exceeds guarantee

Actual Efficiency
83.55%

Guaranteed Efficiency
81.9%

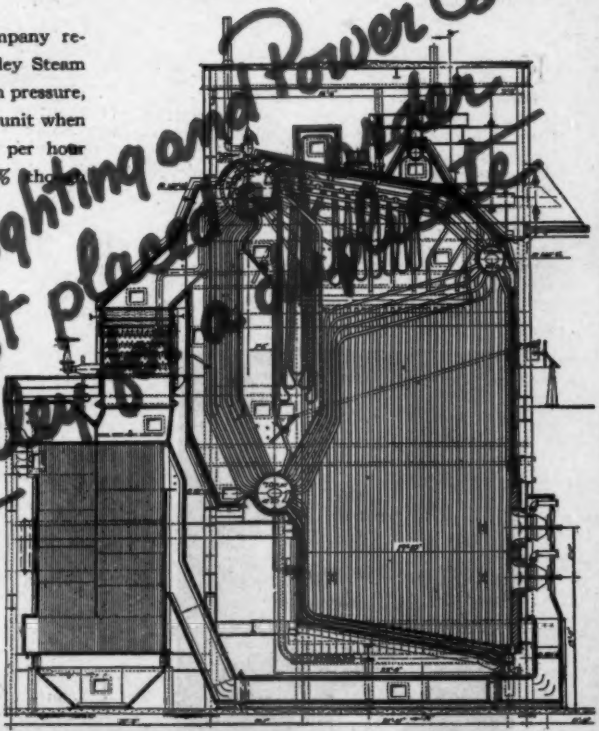


Houston Lighting and Power Company recently installed a 400,000 lbs./hr. Riley Steam Generating Unit, 1000 lbs. drum design pressure, 910°F. total steam temperature. The unit when producing 419,027 pounds of steam per hour operates at an efficiency of 83.55% although guaranteed efficiency was only 81.9%.

TEST DATA
West Junction Station

Lbs. Steam per Hour	419,027 lbs.
Drum Pressure	893 lbs.
Superheater Outlet	862 lbs.
Steam Temperature	907°
Air Heater Exit Gas	340°
LOSSES—	
Hydrogen in Fuel	4.67%
Moisture in Air	.18%
Dry Chimney Gas	4.84%
Radiation	.95%
Efficiency	83.55%
	100.00%

Houston Lighting and Power Co. operates two additional Riley Units at Gable Street.



Houston Lighting and Power Co have just placed their latest unit with Riley's a duplicate

RILEY
STOKER CORPORATION, WORCESTER, MASS.

COMPLETE STEAM GENERATING UNITS
BOILERS • PULVERIZERS • BURNERS • STOKERS • SUPERHEATERS
AIR HEATERS • ECONOMIZERS • WATER-COOLED FURNACES
STEEL-CLAD INSULATED SETTINGS • FLUE GAS SCRUBBERS

versity of Illinois College of Law in 1911 with the degree of LLB. He served as city attorney in Greenville and state's attorney in Bond county before being elected county judge in 1922, a post he held for nearly twenty years before his appointment to be the chairman of the Illinois Commerce Commission in April, 1941. He was elected to the presidency of the National Association of Railroad and Utilities Commissioners at its annual convention in Omaha, Nebraska, in 1944.

C. W. KELLOGG, whose article on the outlook for the electric industry begins on page 19, has served since June, 1936 as president of the Edison Electric Institute. He is a graduate of the Massachusetts Institute of Technology ('03) and was for many years identified with the Stone & Webster organization, being elected in 1934 to the chairmanship of the board of Engineers Public Service. He had previously served as president of Engineers Public Service since shortly after its formation in 1925.

KEITH STRATTON MCHUGH, whose article on the postwar job of the Bell system begins on page 33, is an outstanding example of Bell system men who have spent their entire professional careers in the telephone business. The son of a country doctor, MR. MCHUGH was born at Fort Collins, Colorado, in 1895 and after primary education in that state graduated from the University of Wisconsin (BS '17). He served overseas in World War I as an Army Captain and when he was twenty-four years old began his Bell system career as a clerk in the New York office of the AT&T in 1919. At twenty-six he had risen to general commercial manager of the Chesapeake &

KEITH MCHUGH

The Bell system is set to go full speed ahead on postwar plans.

(SEE PAGE 33)

JOHN D. BIGGS

Postwar state regulation must be free of either domination or intimidation.

(SEE PAGE 12)

Potomac Telephone Company in Washington, D. C., and by thirty-four had become vice president of the New York Telephone Company. Shortly after he returned to the mother company where he was elevated to his present position of vice president of the AT&T in 1938.

E. HOLLEY POE, whose article on the regulatory problems of the gas industry begins on page 25, will be readily recalled for his distinguished wartime service as director of the natural gas and natural gasoline division of the Petroleum Administration for War, a post which he held from June, 1942, until October, 1943, when Secretary of Interior Harold L. Ickes appointed him executive vice president of Petroleum Reserves Corporation. He resigned from this position in 1944 to open his own consulting offices in New York, Washington, D. C., and Chicago. MR. POE comes from the oil and gas country, being a native of Oklahoma, and his entire business career has been spent in some phase or other of the oil and gas industries. From 1937 until he went to Washington to become Secretary Ickes, chief aide regarding natural gas matters, MR. POE was head of the natural gas section of the American Gas Association.

IMPORTANT decisions reprinted from *Public Utilities Reports* may be found in the back of this number.

THE next number of this magazine will be out July 19th.

The Editors

In This Issue

In Feature Articles

In Financial News

In What Others Think

In The March of Events

In The Latest Utility Rulings

PREPRINTS FROM PUBLIC UTILITIES REPORTS

Various regulatory rulings by courts and commissions reported in full text, pages 193-256, from 58 PUR(NS)

Remarkable Remarks

"There never was in the world two opinions alike."
—MONTAIGNE

STEPHEN SHERIDEN
Area director, War Manpower Commission.

"Full employment in the future is only a hope and a prayer—but a realizable hope and an energetic prayer."

ROBERT E. HANNEGAN
Postmaster General.

"I hope that a national economy free of depression will enable our government to draw a line limiting its own activities, and say to business management, 'Beyond this line we will not go.'"

THURMAN W. ARNOLD
Associate justice, United States Court of Appeals for the District of Columbia.

"Never in our history has so much been said in praise of free competitive enterprise. Yet never in our history has there been a greater concentration of economic power in a few hands."

ERIC A. JOHNSTON
President, United States Chamber of Commerce.

"We Americans recognize the principle that economic causes underlie almost every diplomatic and military clash. But we have not yet fully accepted the inevitable conclusion that our economic isolationism could be as perilous as political isolationism."

HENRY A. WALLACE
Secretary of Commerce.

"Small business injects into the blood stream of industry and commerce the health-giving properties of free competition. Free competition is the great regulatory agency which ideally causes industry and trade to adapt themselves to social purpose."

MAURICE AUSTIN
Chairman, committee on Federal taxation, American Institute of Accountants.

"They [existing Federal tax laws] are not only complex and ponderous in language and provisions, they keep changing, as witness twenty-four major tax enactments in the thirty-two years we have had a Federal income tax law, with at least one and sometimes two such laws in each of the last twelve years."

CHARLES B. STAINBACK
Manager, industrial sales department, Westinghouse Electric Corporation.

"We can look for a large decrease in the wartime industrial power consumption of 171,000,000,000 kilowatt hours annually immediately following the end of the war. But within one or two years the demand will build up to about 147,000,000,000 kilowatt hours per year as compared to the 1939 prewar demand of 82,000,000,000 kilowatt hours."

EDITORIAL STATEMENT
Monthly letter, National City Bank of New York.

"The corporate excess profits tax has no rightful permanent place in a private enterprise economy. It penalizes rather than rewards success. It discourages efficiency and efforts to control costs, and hits especially the new and rapidly growing concerns and industries."

JULIUS A. KRUG
Chairman, War Production Board.

"If we were to attempt in Washington to see that every manufacturer, wholesaler, or retailer got his exact share of released man power or materials, we should be lost in a myriad of rules and regulations. We should get in the way of reconversion rather than speed it."

FRED M. VINSON
Director, War Mobilization and Reconversion.

"History shows us that business, labor, and agriculture cannot in themselves assure the maintenance of high levels of production and employment. The government, acting on behalf of all the people, must assume this responsibility and take measures broad enough to meet the issues."

ROY DADISMAN
Manager, market development division, American Rolling Mill Company.

"The ability of business to reach and maintain high levels of activity after the war will depend to a large extent upon effective marketing. Up to the present time production has received the lion's share of scientific research and development. In the future a change in emphasis will be necessary."

ARTHUR H. VANDENBERG
U. S. Senator from Michigan.

"Unity does not require universal and peremptory agreement about everything. . . . The unity I discuss is the over-all tie which must continue to bind the United Nations together in respect to paramount fundamentals. We had it once in the original spirit of the Atlantic Charter, and we must get it back again before it is too late."

J. CAMERON THOMSON
Chairman, United States Chamber of Commerce Committee on Economic Policy.

". . . there must be proper balance between control and consent, between regulation and voluntary action. Without regulations and rules we would have chaos and ineffectiveness; without consent and voluntary decisions we would have regimentation and totalitarianism. While the dividing line between these opposing concepts cannot be fixed once and for all, we will retain a free society only if we maximize consent and voluntary decision."

IRVING S. OLDS
Chairman, United States Steel Corporation.

"Through the adoption of the compulsory [wage] guaranty a definite step might be taken in the direction of an enforced planned economy, under which the government might eventually have to dictate who works for whom. To go a step further, under such an enforced system the government might eventually have to decide what is to be produced and at what price. Under such a system the government might eventually have to decide what consumers should buy."

RODUCTION OF DIVERSIFIED PARTS FOR WAR IMPLEMEN

R&IE PARALLEL LINES OF WAR PRODUCTION

One hundred percent cooperation with the War Effort has found R&IE with parallel lines of War Production.

Diversified facilities in production skill and equipment prompted R&IE to seek and obtain diversified problems as a subcontractor of war materials.

This plan of operation has greatly benefited both the many Prime Contractors and the R&IE organization itself. It has served to maintain a flexibility and adaptability of shop facilities. It has also served to provide experience with new and strange materials, and h furnished an appreciation for a somewhat finer grade workmanship that was generally maintained before.

Along with direct war production, R&IE has continual built switching equipment for the expanding electric industry.

This war time production experience is important to y of the Electrical Industry in that it has further improv the ability of R&IE to produce even better post-w switching equipment.

RAILWAY AND INDUSTRIAL ENGINEERING CO., GREENSBURG, PA

In Canada—Eastern Power Devices, Ltd., Toronto.

RODUCTION OF SWITCHING EQUIPMENT FOR WAR ENERG

6 IMPORTANT ADVANTAGES

TURBULENCE — the most important factor in obtaining complete and rapid combustion in a pulverized fuel fired furnace — is most effectively achieved by the impingement of flame streams upon one another.

Tangential (or corner) firing, to a much greater extent than any other method, produces this ideal condition in a furnace. Intensive mixing occurs which facilitates the combination of combustible and oxygen and promotes rapid and complete combustion. At the same time a rotative or cyclonic motion is imparted to the flame body which:

1. Results in a longer flame travel.
2. Causes the hot gases to spread out and fill the furnace.
3. Provides a sweeping action that assures effective contact of the gases with all furnace wall surfaces.

These effects assure ample time for flame propagation with efficient combustion and low carbon loss, complete utilization of furnace volume and effective transfer of heat to the water walls by convection as well as by radiation. Collectively they account for the higher heat transfer rates and lower furnace exit gas temperatures which characterize the tangentially fired furnace.

When to these basic advantages of tangential firing is added the ability to direct and control the position of the flame body within the furnace, other equally important results are achieved. By means of vertically adjustable nozzles, operated by remote control, the operator can raise or lower his flame zone roughly as indicated by the illustration at the left. Thus adjustable burners provide, in effect, an "adjustable furnace" in that the furnace volume and furnace absorption surfaces can be adjusted to the requirements of any grade of coal delivered to the plant. Actual operating experience has demonstrated that this feature is responsible for several very desirable effects among which the following are the more important:

(1) The temperature at the top of the furnace can be varied from 100 to 150 degrees and by this means a primary control of steam temperature is obtained.

(2) Water wall surface may be employed most effectively for various conditions of operation by the ability to bring more or less of it into the active zone at will.

(3) The ability to vary furnace exit gas temperatures permits substantial control over slaging conditions by providing a means of preventing the ash leaving the furnace from reaching the plastic stage.

Thus the combination of tangential firing and vertically adjustable burners not only provides all of the requisites for efficient combustion and heat absorption but also aids materially in meeting the difficult problem of controlling steam temperature.

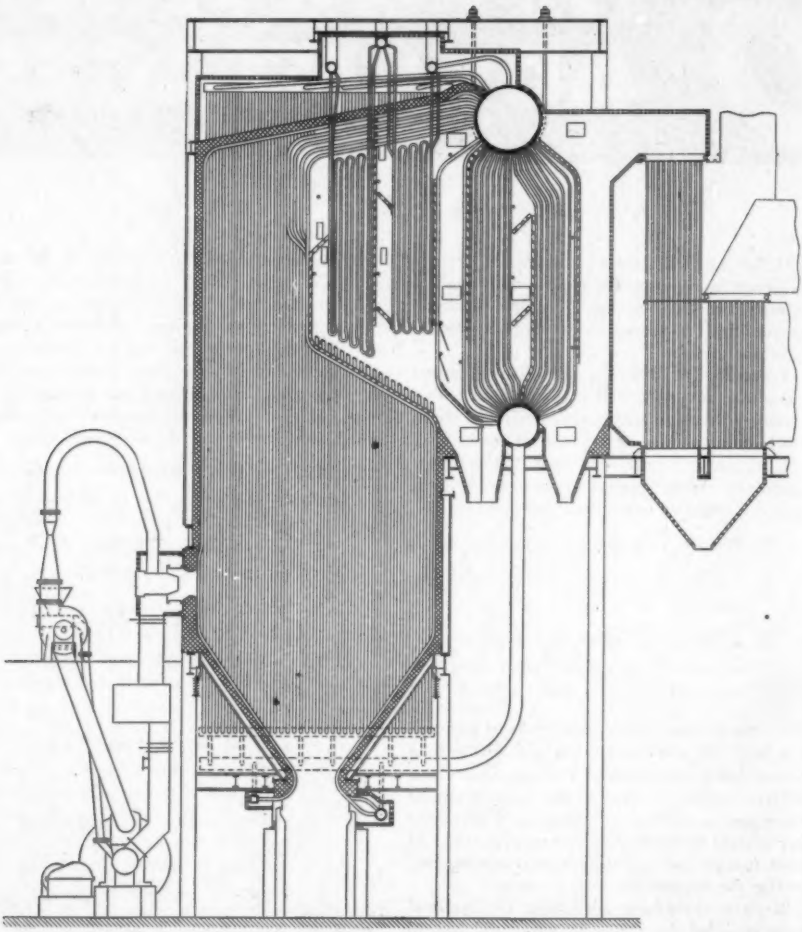
A876-A

COMBUSTION C-E **ENGINEERING**

200 MADISON AVE. NEW YORK 16, N. Y.

C-E PRODUCTS INCLUDE ALL TYPES OF BOILERS, FURNACES, PULVERIZED FUEL SYSTEMS AND STOKERS; ALSO SUPERHEATERS, ECONOMIZERS AND AIR HEATERS

4 NEW STEAM GENERATOR

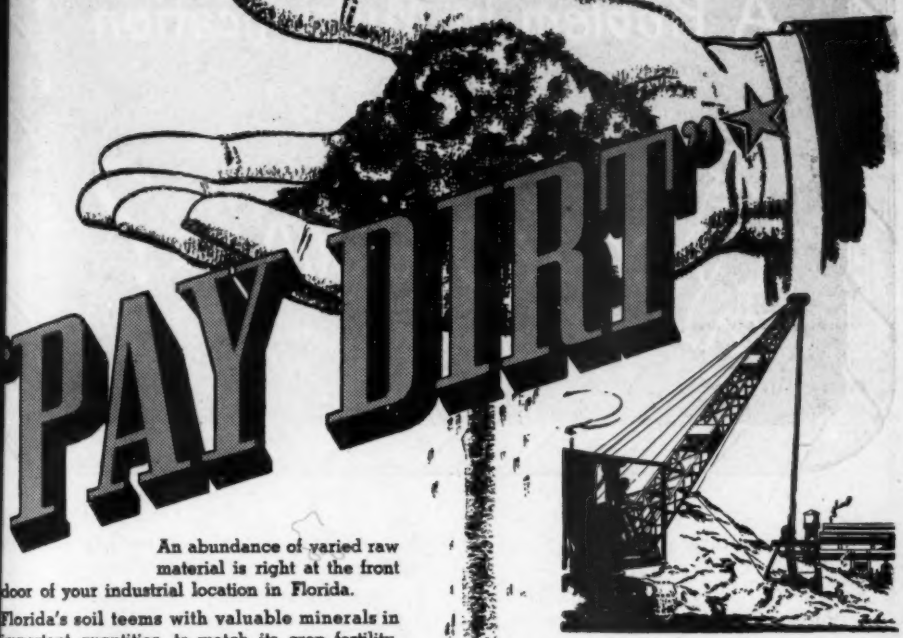


The New Bedford Gas and Edison Light Company and the Staten Island Edison Corporation have each ordered two steam generating units as shown—Pulverized Coal Fired, 950 lb. per sq. in. pressure, and 910 deg. F. final steam temperature.

FOSTER WHEELER CORPORATION • 165 BROADWAY, NEW YORK 6, N.

FW FOSTER WHEELER FW

POST WAR INDUSTRIAL OPPORTUNITIES POINT TO A NEW FRONTIER . . . FLORIDA!



An abundance of varied raw material is right at the front door of your industrial location in Florida.

Florida's soil teems with valuable minerals in important quantities, to match its crop fertility. Added to Florida's strategic location as regards markets—local, national and international—these factors show why the post war manufacturer who locates in Florida may well strike "pay dirt."

Limitless opportunity in endless variety promises well to the builders of Florida's Industrial Empire Transportation maps reveal Florida's nearness by land, sea and air, to vast markets. Investigation will prove its richness in raw materials, abundance of its electric power and sufficiency of its labor supply.

Profit possibilities in Florida manufacture merit your careful and immediate attention. For abstracts of available information on specific resources, contact the Industrial Development Department of Florida Power & Light Company, Miami, Florida.

★ In Florida's soil and beaches are found such commercially valuable minerals as—

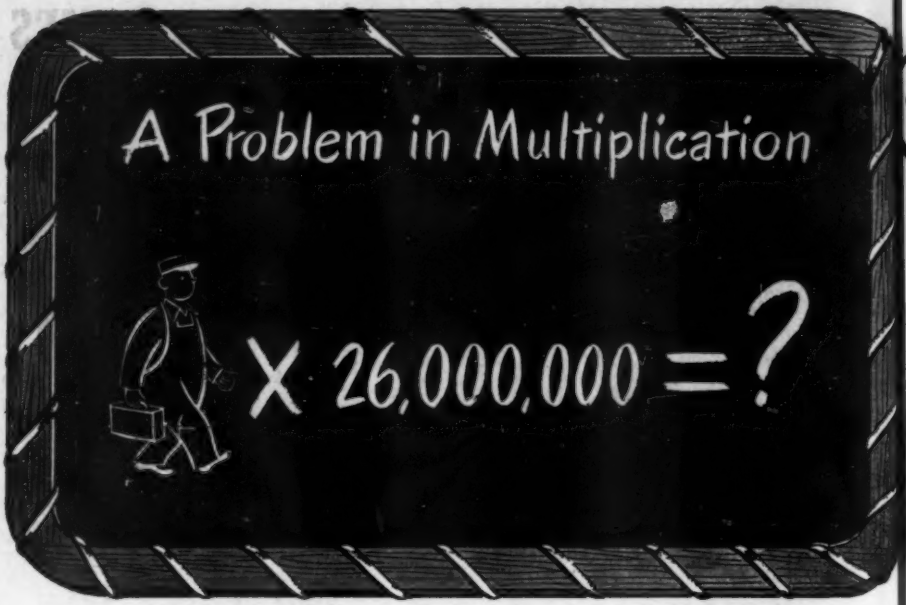
Fuller's Earth, Zircon, (Zirconium), Silica (Glass Sand), Titanium, Pottery Clay (common clay), Brick Clay (common clay), Earthenware Clay, Kaolin, Limestone, Flint, Rutile, Ilmenite, Limonitic Sands (bog iron ore), Diatomete and Phosphate. And in addition to these, Florida offers naval stores, fiber plants, cultivated and wild (ramie); tung oil and other drying oils; wood pulp (Southern pines); hides (for leather tanning).

Florida's industrial empire awaits your participation.

FLORIDA POWER & LIGHT COMPANY

KEEPING BUILD FLORIDA

FLORIDA OFFERS SELECT LOCATIONS FOR INDUSTRIES TO MEET THE DEMANDS OF NEW WORLD MARKETS



Take the case of John Smith, average American:

For over three years now, he's been buying War Bonds. Putting away a good chunk of his earnings, regularly.

He's accumulating money.

Now suppose *everybody* in the Payroll Plan does what John Smith is doing. Suppose you multiply John Smith by 26 million.

What do you get?

Why—you get a whole country that's just like John Smith! A solid, strong, healthy, prosperous America where everybody can work and earn and live in peace and comfort when this war is done.

For a country *can't help* being, as a whole, just what its people are individually!

If enough John Smiths are sound—their country's *got* to be!

The kind of future that America will have—that you and your family will have—is in your hands.

Right now, you have a grip on a *wonderful* future. Don't let loose of it for a second.

Hang onto your War Bonds!

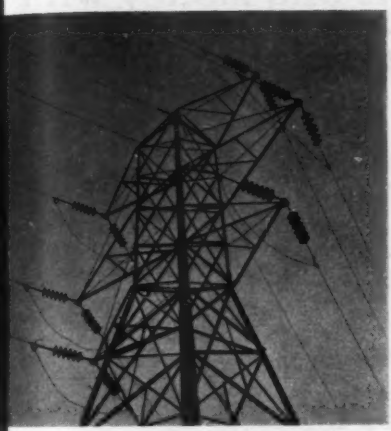
BUY ALL THE BONDS YOU CAN...
KEEP ALL THE BONDS YOU BUY

SOUTHERN UNION GAS COMPANY

DALLAS, TEXAS

This is an official U. S. Treasury advertisement—prepared under auspices of Treasury Department and War Advertising Council

ELECTRIC POWER SERVING WAR NEEDS WILL REMAIN



WITH the glorious victory in Europe, men and materiel are ready being withdrawn from the uropean Theatre of war to the fight- g fronts in the Pacific and when the ease fire" order is wrested from pan, another withdrawal will take ace . . . then, we hope, to return our ary Soldiers to their homes and milies to enjoy the fruits of peace ich their courageous efforts have de possible.

he capital investment, however, ade to provide additional electric wer with which to forge the sinews war . . . guns, armament and other uipment . . . that these men might ve ample resources with which to ht . . . will *not* be withdrawn. It ll remain . . . to make its further ntribution to the future peace and osperity of mankind.

nce 1939 six major additions (total- g 168,000 Kw.) have been made to e electric power system of the Vir- nia Electric and Power Company to pply the additional electric power eded by Government activities in this critical area. These improvements included additions to the steam electric stations in Richmond, Norfolk and Alexandria; the construction of the new Chesterfield power station on the James river below Richmond; the increasing of 66 Kv. transmission lines to 110 Kv. lines, and other construction. These facilities will *not* be withdrawn.

Therefore . . . when the war is over . . . the war-time augmented Electric Power System of the Virginia Electric and Power Company serving Virginia, Northeastern North Carolina and the eastern section of West Virginia will have an abundant supply of dependable electric power for industrial and other peace-time uses throughout a territory that is highly diversified in character and suitable for large and small industries, manufacturing and agricultural pursuits. In this area a moderate climate prevails throughout the year . . . it is easily accessible to raw materials . . . in normal times there is an abundant supply of good native labor . . . and both rail and water facilities afford easy and ready access for the finished product to the markets of the world.

Industrialists, manufacturers and others seeking location or re-location for their plants . . . when the war is over . . . will do well to consider now the natural and other advantages available throughout this strategic area served by the Virginia Electric and Power Company Electric Power System.

Inquiries directed to the company at its general offices in Richmond or to its Division offices in Norfolk and Alexandria, Virginia, and Roanoke Rapids, N. C., will have prompt consideration and attention.

VIRGINIA ELECTRIC AND POWER COMPANY

150-kva substation built piecemeal

APACITY WAS DOUBLED
less than revamping cost - - - via STANDARDIZATION

HERE'S a clear-cut example from the *industrial* field that shows what repetitive manufacture is accomplishing. It helps plain, in terms of dollars saved for the yer, why General Electric is urging a der application of this principle in the nufacture of heavy power apparatus.

Greater output made it imperative for is lumber mill to double its substation pacity. Maintenance was high, interrupt- g capacity inadequate. The substation ructure impeded yard traffic. Making room three new 100-kva transformers and cessories presented a difficult problem.

Then, as an alternative, G.E. recommended the installation of a self-contained, indoor unit substation. When the costs were analyzed, the new 300-kva unit substation was proved less expensive than the revamping plan.

Last report: "Company is enthusiastic over unit substations and intends to install more."

Although simpler than the problems you encounter, this case is further evidence of what repetitive manufacture can do to increase the economic worth of *power apparatus*. In making your plans for the future, will you work with us to broaden the scope of this program? *General Electric Company, Schenectady 5, N. Y.*

GENERAL ELECTRIC

Tailor-made

An Elliott 5400-kw. synchronous generator for ship propulsion. A large number of these units are under construction in our Ridgway plant. They typify Elliott engineering excellence, and care in construction detail.

L-753A

ARMY (E) NAVY

ELLIOTT COMPANY

Electric Power Dept., RIDGWAY, PA

Plants at: JEANNETTE, PA. • RIDGWAY, PA
SPRINGFIELD, O. • NEWARK, N. J.

DISTRICT OFFICES IN PRINCIPAL CITIES

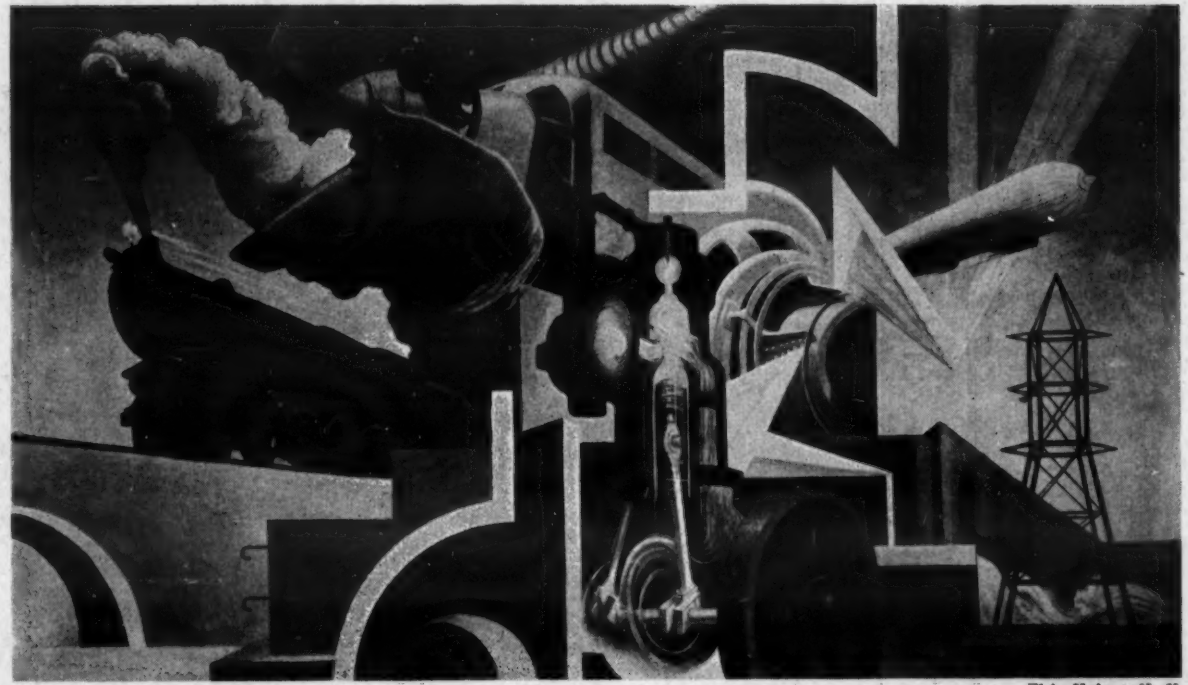
STEAM TURBINES • GENERATORS • MOTORS • CONDENSERS • FEEDWATER HEATERS AND DEAERATORS • STEAM JET EJECTORS • CENTRIFUGAL BLOWERS • TURBOCHARGERS FOR DIESEL ENGINES • TUBE CLEANERS • STRAINERS • DESUPERHEATERS • FILTERS

Utilities Almanack

Due to wartime travel restriction, conventions listed are subject to cancellation.

JULY

5	T^{h}	¶ *American Water Works Association, Michigan Section, will hold meeting, Flint, Mich., Sept. 12, 13, 1945.*
6	F	¶ *American Water Works Association, Pennsylvania Section, will hold meeting, Pittsburgh, Pa., Sept. 14, 1945.*
7	S^{a}	¶ *National Association of Railroad and Utilities Commissioners will hold annual conference, French Lick Springs, Ind., Sept. 17–20, 1945.*
8	S	¶ *New England Gas Association will hold Home Service Development Conference, Boston, Mass., Sept. 17–21, 1945.*
9	M	¶ *Chamber of Commerce of the United States will hold board meeting, Washington, D. C., Sept. 21, 22, 1945.*
10	T^{u}	¶ *American Water Works Association, Southwest Section, will hold meeting, Oct. 15–17, 1945.*
11	W	¶ *American Water Works Association, California Section, will hold meeting, Los Angeles, Cal., Oct. 23, 1945.*
12	T^{h}	¶ *National Association of Railroad and Utilities Commissioners opens executive committee meeting, Chicago, Ill., 1945.*
13	F	¶ *American Water Works Association, Wisconsin Section, will hold meeting, Milwaukee, Wis., Oct. 30, 31, 1945.*
14	S^{a}	¶ *American Water Works Association, North Carolina Section, will hold meeting, Charlotte, N. C., Nov. 5–7, 1945.*
15	S	¶ *American Water Works Association, Virginia Section, will convene, Roanoke, Va., Nov. 8, 9, 1945.*
16	M	¶ *American Water Works Association, New Jersey Section, will hold meeting, Atlantic City, N. J., Nov. 8–10, 1945.*
17	T^{u}	¶ *National Rural Electric Coöperative Association starts meeting of board of directors, Chicago, Ill., 1945.*
18	W	¶ *Chamber of Commerce of the United States will hold board meeting, Washington, D. C., Nov. 30–Dec. 1, 1945.*



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Power in All Its Phases

A Mural Painting by Thomas Hart Benton

Public Utilities
FORTNIGHTLY

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A Mural Painting by Thomas Hart Benton

A Century of Regulation by Public Utility Commissions

Its humble start with the railroads, its growth and spread to the other well-known utilities, its success, its present status and tendency, and, incidentally, the high value of utility service to the public compared with what customers are charged for it.

BY HENRY C. SPURR

IN this issue of the FORTNIGHTLY we are marking the thirtieth year of the publication of *Public Utilities Reports,* familiarly known as PUR, the national reporting system of commission and court decisions relating to the regulation of public utilities. To date 157 volumes have been printed and the commissions are busier than ever. Thus it is evident that this type of government control of business is not an ephemeral thing. How did the states come to take on that job? Has regulation been successful? What has been the public attitude toward utilities? What is the present regulatory tendency? These questions seem worth considering in this commemorative issue.

Regulation of utilities by commissions sprang up because of the inadequacy of previous forms of control. Steam railroads were the first of the public callings to be put under commissions. Two New England states set up railroad commissions in 1844, other states gradually following suit. These early commissions merely had to check on law observance by the companies, to see that safe and adequate service was

provided, and recommend needed changes in the statutes. In New York, for example, railroads could not begin service without a certification by the commission that the road was properly finished, properly ballasted, had suitable crossings, bridges of sufficient strength, adequate rolling stock, and other equipment and facilities.

The reasonableness of rates, which later on became the hot spot of regulation, was at that time deemed amply taken care of by competition, just as it is in other kinds of business. The early competition between railroads was vigorous and spectacular but not animated enough, to the public's way of thinking, to insure reasonable rates. Businesses flourished in spite of competition. Railroads made money. Competition was also accompanied by several unpopular companions, such as wasteful duplication of facilities, rebates, and other forms of discrimination in the free-for-all struggle for business. A storm was brewing. It broke out in the 1870's as a result of agitation by the Granger organizations. More stringent regulation by both state and Federal governments was demanded. Farmers evidently no longer regarded the railroads as benefactors, because they asserted that regulation "should be at all times so used as to prevent moneyed corporation from becoming engines of oppression."

As a result of this agitation maximum rate laws were passed in many states. For a period of twenty years this was the marked regulatory movement. This type of direct legislative regulation, however, proved vulnerable to the criticism that it was often affected by political pressures and that the statutes were passed without proper consideration of the problems involved and knowledge of the conditions affecting individual companies. It was declared especially untrustworthy when applied to utilities having a wider variation of operating conditions than railroads. This was pointed out in an early New York case in which it was said: "There are in this state approximately 450 gaslight and electric companies. They are located in nearly every portion of the state, which contains within its bounds not only cities varying in population from 10,000 to 4,000,000, but villages, agricultural or rural communities, and the wild forests of the Adirondacks. It is plain that no uniform rate of charges could be established that would be just or reasonable." Direct legislative action was also unsatisfactory because it could not be readily changed to meet unforeseeable conditions, especially those arising in emergency periods.

During the next decade, therefore, direct legislative control was little by little relinquished in favor of regulation by the commissions. The powers of these commissions were gradually strengthened and their jurisdiction extended over several kinds of carriers other than steam railroads.

By 1905 there were strong railroad commissions possessing most of the basic powers of the present public utility commissions, such as:

(1) General power of supervision and control;
(2) Power to enter upon premises to inspect;
(3) Power to examine employees and records;
(4) Power to prevent unreasonable rates, discrimination, local and personal;

(5) Power to fix rates;
(6) Power to value property for the purpose of determining rates;
(7) Power to establish joint rates;
(8) Power to compel filing and posting of schedules;
(9) Power to prescribe forms of schedules, reports, and uniform accounts;
(10) Power to regulate service and prescribe standards of safety;
(11) Control over stock issues.

THE regulation of public utilities other than common carriers was for a much longer time left either to competition or placed in the hands of the local authorities. Because of their more limited spheres of service, regulation of street railways, gas, electric, telephone, and water companies was considered strictly a home-rule matter.

The folly of cut-throat utility competition from a public standpoint was soon recognized. It was especially observable in the telephone field and led to the passage of laws forbidding it. Competition in territories needing only a single utility resulted in inferior service, often in the merger of rival companies and recoupment of losses by higher rates. A controlled monopoly seemed the solution of the utility problem.

This control, first left to the local authorities, was usually by franchise contracts or municipal ordinances. This form of regulation was also found wanting because of the impotency of the local authorities to deal intelligently with regulatory problems. The local representatives were—or at least were thought to be—at the mercy of the better equipped experts and technicians of the utility companies. Another weakness of regulation by contract was its inflexibility. Franchises were usually for long periods during which conditions might change for the worse either from the municipal or company standpoint. The contracts were also usually highly discriminatory—some of them fantastically so.

In several of the states regulation was in the hands of local bodies and commissions, a step in advance. In 1885 Massachusetts established a Board of Gas and Electric Light Commissioners, and in 1905 New York set up a Commission of Gas and Electricity.

SUCH was the general situation up to 1907 when the history of modern public regulation by state commissions is generally considered to have begun in earnest. In that year Wisconsin, New York, and Georgia established strong commissions, investing them with jurisdiction over telephone, telegraph, gas, electric, and water companies. Other states soon followed. Regulation by state commissions, has, of course, since been supplemented by that of the Federal commissions filling the interstate commerce gap left by the

¶ "STATEMENTS *that commission regulation has been a great success or an abject failure are of little value because they are not statements of a fact but mere expressions of opinion, usually highly colored by the predilections or prejudices of the individuals making them, and asserted without a full and dispassionate consideration of all the facts.*"

state laws and covering special Federal interests, such as the administration of the Public Utility Holding Company Act of 1935 and the Federal Power Act.

Briefly, then, commission regulation came into being

(1) because of the public evils of competition in the utility field;

(2) because direct regulation by legislatures was unscientific and inadequate;

(3) because the local authorities were not equipped to deal on an even footing with the utilities in regulatory matters; and

(4) because general laws and contracts were too inflexible for reasonable regulation under varying conditions of operation.

The commission form of regulation seemed best adapted to meet the public need. The commission staffs would be technically equipped for the work. The commissions could give their full attention to the job. As their services would be available at all times it was believed they would be in position to act with promptitude. This looked good in theory both from the public and utility angle. Has it turned out well?

THE question of how close commission regulation has come to the objective set for it by its early advocates, or how far it has fallen short of their expectations, cannot be answered in much detail in an article as short as this one must be. No one asserts that commission regulation has been so perfect in all respects as to be beyond criticism. The commissioners themselves would agree to that. But criticism of believed defects is quite different from the sweeping assertion that the whole thing is a failure and ought to be abolished in favor of "yardstick" regulation or outright government ownership and operation.

Statements that commission regulation has been a great success or an abject failure are of little value because they are not statements of a fact but mere expressions of opinion, usually highly colored by the predilections or prejudices of the individuals making them, and asserted without a full and dispassionate consideration of all the facts. One would not look for a favorable opinion as to the effectiveness of regulation from a utility executive holding the extreme view that utility operations should be absolutely untrammeled; nor from the advocates of government ownership and operation of utilities who believe that to be the only solution of the utility problem. Such opinions must be discounted.

The opinions of those who are disappointed and upset by commission and court decisions on controversial regulatory questions and who, therefore, believe regulation futile—at least until the courts and commissions change their views—must also be taken with several grains of salt. Such views are quite like that of the gentleman who went about declaring our law courts worthless and all persons connected with the judicial proceedings, including judges, lawyers, and juries, untrustworthy.

"No one can get justice in the courts," he cried. "I know that from bitter personal experience. In my lifetime I have had five lawsuits. I have lost every last one of them; and in every last one of them I was right."

THE truth is that very few persons have a sufficient knowledge of the facts to express an intelligent opinion

Utility Customers Not "Exploited"

"If the reasonableness of utility rates were measured by the value of the service to the customers—what the customers get for what they pay—it is hard to see how the ratepayers have been 'oppressed or exploited.' The mere size of utility corporations serving thousands of customers is a sufficient demonstration of the senselessness of that assumption."

as to how far commission regulation has succeeded or failed. It is significant, however, that investigations by hostile legislative committees, in which facts, instead of opinions, were put in evidence, have not borne the condemnatory fruit the enemies of regulation hoped for.

From a careful reading of commission and court decisions on regulatory questions for a period of thirty years, covering the entire range of formal commission work, the opinion seems justified that in opening the books of the utilities to public inspection, in the establishment of uniform accounting and standards of service, in the elimination of discrimination both in rates and service, in the regulation of security issues, and in putting the public in full possession of all of the facts necessary for it to know about the utility business, commission regulation, if it had done nothing else, would have justified itself.

If the reduction of utility rates is to be considered the prime objective of regulation, the "end result" by which its effectiveness is to be judged, then, from the ratepayers' standpoint, commission regulation has also proved effective. Reports of savings on rate schedules lowered through commission action since the commissions have begun to check on that matter show that utility customers have profited substantially by commission action. However, the question whether commission regulation is worth while — whether it should be continued or abolished— after so many years of trial, when as now the commissions are stronger and more active than ever, would appear academic.

The questions of much more vital interest are:

What has been the public attitude toward the utilities?

What is the present regulatory tendency?

THE bitterest controversies in the field of regulation have had to do directly or indirectly with rates. The attitude of the public toward the utilities at times and in spots has been extremely hostile. The corporations have frequently been regarded not as public benefactors but as public enemies bent solely on plundering their customers in order to get rich.

Seventy-five years ago the Grangers stigmatized the corporations as "engines of oppression." Even today that idea, in spite of the experience of the regulatory commissions, retains some of its early popularity. Children have been indoctrinated with it. Recently, for example, a young girl in one of the upper grades of a city grammar school wrote an essay on public ownership—for which she received a high mark—in which she said:

"Public ownership is when the whole city or county has charge of the utilities; but private ownership is when a person controls and gets rich on something that the whole population needs. The money in public ownership goes to the city, while in private ownership just a few get rich."

The child's belief undoubtedly was that the owners of privately operated utilities always get rich by overcharging their customers. Notice also that the statement was made many years after its falsity had been amply proven by commission regulation.

Some of the early state commissioners were evidently strongly imbued with the oppression or exploitation idea. They stated frankly that in their opinion regulation was solely for the protection of the ratepayers; that the corporations were amply able to take care of themselves, an indication of the "engine of oppression" background. That view did not prevail among the commissions, but continues to be urged by some of our political leaders and crops out occasionally in decisions and in the arguments of writers on public utility questions.

IF the reasonableness of utility rates were measured by the value of the service to the customers—what the customers get for what they pay—it is hard to see how the ratepayers have been "oppressed or exploited." The mere size of utility corporations serving thousands of customers is a sufficient demonstration of the senselessness of that assumption. It would be impossible for any business enterprise to introduce a brand-new article or service to the public and thereafter prosper and grow big on exorbitant charges. It just could not be done. After all, nobody had to have a telephone, or an electric range, or a refrigerator, and as for electric power, did we not have the steam engine? Nobody had to scrap that. The fact is that instead of oppressing and exploiting their customers, the utilities have probably always put more money into the pockets of the ratepayers than they have taken out.

A few years ago a commission merchant in a small town sent a telephone company a bill for $60 for the loss he had suffered in three days because his telephone line was out of commission. He claimed the company was to blame and sent it an itemized bill, in which he valued the service at $20 a day. In such a case to say that the telephone company was exploiting its customer by any rate it would be permitted to charge for the service would be like saying that

an uncle who gives his nephew $100 a month to help him pay his way through college is exploiting his nephew because the uncle does not give the nephew twice that sum and furnish him an automobile and chauffeur.

THE reasonableness of rates of a regulated public utility cannot, it is true, be measured by the value of the service; but what the public is getting for its money should not be entirely overlooked in the rate-fixing process. The value of the service being too nebulous and impractical a standard of measurement of utility rates, a handier and simpler criterion had to be adopted. That criterion was the percentage of profits. It was thought that all the commissions would have to do would be to ascertain that percentage—a mere question of fact—and then determine whether it was too high or too low. Reasonable rates could readily be based on that information.

This, however, proved far from a simple matter. A stiff battle has been waged over the preliminary question of what the percentage of return in any given case is. It has called for costly research by technicians and has produced reams of expert testimony in rate cases. The proceeding has often been slow, long, tedious, and costly.

Some think this is because regulation got off to an allegedly bad start; that it was handicapped for years by the decision of the Supreme Court in the Smyth *v.* Ames Case in 1898, in which it was ruled that the percentage of profit or the return should be based on value of railroad property rather than on capitalization. It will be recalled that William J. Bryan appearing on behalf of the ratepayers in that case argued that railroads should be treated like ordinary business enterprises; that the railroads should profit by a rise in values and lose by a fall in values. What Mr. Bryan, however, happened to want in that particular case was that the railroads like other businessmen should take a loss from a fall in values.

FOR some time after the Smyth Case decision the value basis of calculating the return was all the rage. State commissions were authorized to ascertain the value of utility properties sometimes in advance of rate cases. Congress required the Interstate Commerce Commission to value the railroads. But the commissions soon became unfriendly to the value rate base theory, although most of them made honest efforts to apply it as required by the Supreme Court rule. Some of them, however, while giving lip service to the value base, sought by various ways to avoid it in favor of an investment base. Some actually flouted the Supreme Court requirement, as in Massachusetts and California. The great cost of ascertaining value, the highly speculative nature of much of the expert evidence in the cases, the strong emphasis

¶ "WHEN *one considers the cheapness of utility service as compared with the cost of other things we buy, and the fact that we are constantly being enriched by it, perhaps we may be fooling ourselves by trying to keep the return too low and by wrapping it up in too much red tape.*"

of the companies on various types of alleged intangible value, and the lack of stability of the present value base were among the factors turning the public away from it. Also the fact that values continued to rise instead of fall may have had some influence on a generation of public representatives who were not ready to go along with Mr. Bryan in his assertion that railroads—an assertion equally applicable to utilities—should, like ordinary business enterprises, profit by a rise of values.

For a number of years now those who speak for the ratepayers have been in favor of basing the return on prudent investment rather than present value. The "prudent" qualification indicates that if that theory should finally be given the green light by the Supreme Court, there will still be room for controversy. Undoubtedly, the rate-making process would be considerably simplified; and there would seem to be no reason why such a rate base should not be satisfactory to the utilities if it were consistently applied in periods of low, as well as high, values, and *if a proper return were allowed on it.*

THE rate base question, however, is still unsettled. Recent Supreme Court decisions neither approve nor disapprove any particular type of rate base. The court gives great weight to conclusions reached by commissions. It requires no formula for rate making. Whatever rate base or rate of return may be adopted, the court holds that the ultimate question is whether the rates are sufficient to produce earnings which will attract capital, permit efficient operation, and maintain the stability of the enterprise.

Admittedly this is an indefinite criterion. Its most successful application is apparent in cases where the court can point out that over a period of years a company has been able under contested rates to sell securities, expand its plant, supply good service, and increase its surplus. Analysis of past results and forecasts for the future under changed rates would seem, under Supreme Court rulings, to be matters primarily for commission decision.

The two principal types of rate cases which come before the Supreme Court are

(1) reviews of orders of Federal commissions, and

(2) reviews of orders of state regulatory authorities assailed as violating provisions of the Federal Constitution.

As to the first class of cases, the rule seems to be that in rate making under the Federal regulatory statutes, such as the Federal Power Act and the Natural Gas Act, the commissions are freed from the fair value rule of Smyth *v.* Ames.

As to the second class of cases, the rule appears to be that state commissions need not follow the fair value rule in order to avoid violation of the requirements of the Federal Constitution. State commissions, as has been indicated in some recent court decisions, may be bound by state law requiring a fair value rate base.

A NUMBER of commissions at present seem to be proceeding on the belief that under the recent Supreme Court decisions "value" is out of the window; that, in consequence, they no longer need devote as much time as formerly to the problem of ascertainment of the rate base; and that the reasonableness of return may, therefore, be given more attention.

The supposition is that up to date there has been too much rough guesswork about the return, that the time has come to subject it to a more scientific analysis in the interest of precision. Instead of a certain over-all percentage of return upon the rate base the actual cost of borrowed money and the dividends on preferred stock are to be allowed, and after that whatever percentage the commission deems reasonable on the common stock.

Whether this would be a forward step in the public interest is for the experts to say; but to the layman, judging from the discussion that has thus far emerged, it looks as if the question might turn out to be quite as recondite and speculative and give rise to as much difference of opinion as have such inquiries as: What is the cost of development of a business? What is the cost of reproducing a business? What is the value of a railroad right of way?

At the present stage of the discussion it does not seem appropriate for a layman to express any opinion as to its merit. To one in the grandstand, however, it would appear that the merit of the proposal would depend to a considerable degree on the "end result" sought. If the object is to determine with scientific precision the rock bottom cost of utility service; that is to say, the least possible sum for which the stockholders can be induced to furnish it, it would mean that we were trying to apply the discredited all-the-traffic-will-bear principle in reverse. We would simply be putting that ancient rascal to work for the ratepayers instead of the stockholders. It is doubtful whether the old fellow would be made any more respectable or serviceable by a mere change of masters.

It is questionable whether all-the-traffic-will-bear practice has ever been good in the long run for one who employs it. It might turn out not to be in the interest of utility customers to utilize it against stockholders.

When one considers the cheapness of utility service as compared with the cost of other things we buy, and the fact that we are constantly being enriched by it, perhaps we may be fooling ourselves by trying to keep the return too low and by wrapping it up in too much red tape. Possibly the alleged rough guesswork thus far employed is not so bad for the public after all.

The War Record of Electric Power

"THE country takes justifiable pride in the achievements of the armed forces and in the magnificent job of industrial America in supplying the needs of war. Yet I doubt that the public generally is aware of the tremendous contribution the electric and gas utilities have made with their own resources and without fanfare. This industry has supplied the very life blood of the war production effort throughout the country. Ration coupons were never needed to buy electricity or gas. It has never been necessary to fix ceiling prices. There has never been too little, too late."

—RALPH H. TAPSCOTT,
President, Consolidated Edison Company of New York, Inc.

The Forward Course of the Utility Commissions

Both the Congress and the state legislatures have continually placed more and more of the functions of the government in the hands of the various administrative agencies and to a large extent, declares the author, these agencies have become an essential part of the modern social and economic order.

By JOHN D. BIGGS
PRESIDENT, NATIONAL ASSOCIATION OF RAILROAD AND UTILITIES COMMISSIONERS AND CHAIRMAN, ILLINOIS COMMERCE COMMISSION

THE time is appropriate for looking forward. The war in Europe is over. There remains a great unfinished military, naval, and air operation against a powerful enemy but the outcome is not in doubt. It is only a matter of time, and we hope not too much time, before we enter upon the postwar period and, in our domestic affairs, deal with the great economic problems which that period must necessarily bring before us. There will then be an end to many of the devices, expedients, inhibitions, and restrictions which necessarily have characterized the war period. It is not likely, or at least so we earnestly hope, that we will be confronted with the extraordinary governmental and economic measures and situations that marked the years preceding the war and which had their origin, and sometimes their justification, in the conditions of the great depression. The years to come will not be like the war years, neither will they, in all probability, resemble very closely the years preceding the war.

To undertake the rôle of a prophet is proverbially dangerous. Nevertheless, I have been asked to look into the future, as best a humble mortal can do, and while I have no gift of prophecy there are some things in the field of public utility regulation which I believe it requires no such gift to discern.

ONE of these things, and a very outstanding one, is the fact that we have been for some time in a phase of refinement and development of the art and science of public utility regulation as an important phase of the growing field of administrative law, and that this phase is likely to continue for some time. During the last two decades, ad-

ministrative law has developed rapidly, has made for itself an important niche in American jurisprudence, and that niche has expanded notably during the war years. Both the Congress and the state legislatures have continually placed more and more of the functions of government in the hands of various administrative agencies. These agencies, moreover, have been given not only conventional ministerial and administrative powers, but powers which are in their essential nature either judicial or legislative, or both. To a large extent these agencies have become an essential part of the modern social and economic order.

It may be, and undoubtedly there is a considerable body of opinion that considers, that the pendulum has swung rather far in this direction and that some reverse movement is due. It is certain that the average citizen resents what he deems to be official meddling with his business or private affairs and has great fear of bureaucracy. It is also a fact that a considerable part of the more recent swing toward the creation and expansion of administrative tribunals of one kind and another grew out of conditions that were temporary in their nature. This, however, is not so with respect to the tribunals engaged in the regulation of public utility and transportation companies.

It is now almost sixty years since the original organization of the Interstate Commerce Commission, an event which perhaps gave the greatest early impetus to the development of such administrative tribunals as important agencies of government in this country and caused Americans to begin to be conscious of their existence, availability, and importance. The fundamental reason for this general movement was sound; that is, there existed a real need for more detailed, adaptable, and skilled governmental regulation than could be afforded by legislatures, executives, and courts. Even so, the acceptance and full recognition of these agencies as part of our system of jurisprudence, as well as government, did not follow at once.

Over a quarter of a century ago the supreme court of Illinois, being perhaps in somewhat of a prophetic mood, had this to say with respect to the then public utilities commission:

> The notion that commissions of this kind should be closely restricted by the courts, and that justice in our day can only be had in courts, is not conducive to the best results. There is no reason why the members of the public utilities commission of this state should not develop and establish a system of rules and precedents as wise and beneficial within their sphere of action, as those established by the early common law judges.[1]

The comparison between the development of a "system of rules and precedents," that is, a specialized body of administrative law, and the development of common law by the early judges, is a most interesting one. It may be said now, after a quarter of a century, that not only in Illinois but throughout the country there exists now such a body of specialized administrative law, and that the further refinement of this body of law will be an outstanding work during the coming years. This is a great work, an important and beneficial extension of our general system of jurisprudence, and one that we who are engaged in it may well view with pride.

Interesting also is the first sentence

[1] State PUC ex rel. Springfield *v.* Springfield Gas & E. Co. 291 Ill 209, PUR1920C 640, 647.

in the above-quoted dicta, to the effect that commissions need not be closely restricted by the courts, and that justice can be had elsewhere than in the courts.

It is rather prophetic of a long series of later decisions of many courts, particularly the Supreme Court of the United States, upholding the exercise of discretion (expressed in varying language) by administrative tribunals, upholding them in the exercise of what are judicial, or at least quasi judicial rather than administrative, functions, and declining to interfere with their determinations except where outside of their jurisdiction or clearly unsupported by the record.

I BELIEVE that the development, refinement, and crystallization of this important branch of administrative law will be one of the outstanding achievements of the immediate future. In fact this development, in which we as administrative officers have the privilege to be engaged, undoubtedly has its effect upon the older branches of jurisprudence. Quoting from a recent treatise on the subject, "One wonders if the advent of administrative tribunals with their simplified procedure and their relaxation of technical rules of the common law, will in the course of time have a liberalizing effect upon conventional judicial processes.

Such a result is not out of the question, and at least a few observers have pronounced it a likelihood."[2]

The much discussed decision of the Supreme Court of the United States in the case of Federal Power Commission *v.* Hope Natural Gas Company[3] is particularly appropriate to illustrate the length to which that court has now gone in recognizing the discretion of a regulatory commission in a rate case.

THE Hope decision holds, among other things, that the commission is not bound to establish or follow any single formula for the fixing of rates, that the question on review is not the method of valuation which was used but the end result obtained, since the issue is whether the rate fixed is "just and reasonable." This doctrine is described by Mr. Justice Jackson, who was one of the dissenting justices in the Hope Case, in a special concurring opinion in the subsequent case of Colorado Interstate Gas Co. *v.* Federal Power Commission[4] in the following language:

> It is not theory but the impact of the rate order which counts. If the total effect of the rate order cannot be said to be unjust and unreasonable, judicial inquiry under the act is at an end. The fact that the method em-

[2] "The Law of Administrative Tribunals," by E. Blythe Stason, professor of law, University of Michigan, p. 419.

[3] (1944) 320 US 591, 88 L ed 333, 51 PUR (NS) 193.

[4] (1945) 58 PUR(NS) 65, 83, 65 S Ct 829.

¶ "BOTH *the Congress and the state legislatures have continually placed more and more of the functions of government in the hands of various administrative agencies. These agencies moreover have been given not only conventional ministerial and administrative powers, but powers which are in their essential nature either judicial or legislative, or both.*"

ployed to reach that result may contain infirmities is not then important.

Of the Hope Case, specifically, he says:

> This case introduced into judicial review of administrative action the philosophy that the end justifies the means. I had been taught to regard that as a questionable philosophy, so I dissented and still adhere to the dissent. But it is the law of this court, and I do not understand that any majority is ready to reconsider it.

Whether one inclines to the view of the majority or of the minority of the court in either of these cases, the fact is outstanding that the determination of a rate case must now rest rather heavily upon judgment and discretion of the commission. The substantial requirement is that the end result be a reasonable one.

Of the reasonableness of the end result the commission is to decide, a decision which must of necessity involve a large exercise of discretion. The decision is subject to review but the review, under the prevailing law, is limited and there is a strong *prima facie* presumption in favor of the reasonableness of the commission's order. The effect of this is to establish more firmly the position of the administrative regulatory commission as the trial forum in which rights of the parties are determined, subject only to a limited judicial review. This is a long step beyond the older conception of a commission as a mere "fact-finding body."

The Hope Case has been criticized in some quarters as placing an undue amount of discretion in the hands of the regulatory commission. Whether or not this criticism is justified, the fact remains that the case is indicative also of the trend to place more rather than less discretion in these tribunals. This speaks well of the work which the commissions as a whole have done in the past and of their future development.

One of the tendencies, observable particularly during the past decade, is the trend toward establishment of governmental corporations or corporations in which the government in some way is interested. Some of these are designed and authorized to conduct operations within the field of public utilities and transportation. A notable instance is the electric rural coöperatives and, while these are found throughout the country, their exact status with respect to state regulation, in so far as I am aware, has never been finally determined.

Such organizations also as the Tennessee Valley Authority have had undoubtedly an important effect, at least in certain large areas, in the regulation of electric public utility service. Electric and other public utility services are also furnished widely by municipalities or districts organizing for that purpose and here the law and practice differs in different states. Possibly complete unification of regulatory authority never will be achieved in this field and we must recognize the fact that the functions of the state commissions, one form of administrative agency, do conflict to some extent with the functions of these other public corporations as another type of administrative agency.

It seems to be our American way to let these things grow more or less haphazardly, establishing agencies, tribunals, corporations, or authorities as the immediate exigencies seem to re-

Organization of Interstate Commerce Commission

"It is now almost sixty years since the original organization of the Interstate Commerce Commission, an event which perhaps gave the greatest early impetus to the development of such administrative tribunals as important agencies of government in this country and caused Americans to begin to be conscious of their existence, availability, and importance. The fundamental reason for this general movement was sound; that is, there existed a real need for more detailed, adaptable, and skilled governmental regulation than could be afforded by legislatures, executives, and courts."

quire and later trying to coördinate them into some sort of a unified scheme. One of the things which the immediate future may bring forth is some more definite progress in evolving a unified system or working arrangement with respect to all government or public agencies, municipal, state, or Federal, which deal with public utility and transportation service.

None of us will contend that the present state commissions, with respect to their own organization, powers, jurisdiction, and staff, are perfect. The years ahead will be characterized, as I see it, by substantial improvements with respect to the commissions themselves and their organizations. It is not likely that the commissions generally will have quite the same detachment, independence of public mood, and reaction as the courts (and perhaps this is well), but the tendency is toward fixity of tenure and dignity of office, a "tribunal appointed by law and informed by experience."[5] To perform its functions a commission must be implemented with not only adequate powers but a sufficiently trained and experienced staff to enable these powers properly to be exercised. Public utility regulation is more and more a specialized field. The outstanding commissions have recognized the need of a competent staff specially trained in this field and with reasonable security of tenure. A development of the future I believe will be in the direction of further strengthening of the technical staffs of the various commissions.

It may be observed incidentally that this is one point in which the ad-

[5] Illinois C. R. Co. *v.* Interstate Commerce Commission (1907) 206 US 441, 454, 51 L ed 1128, 1134.

ministrative tribunal has a distinct advantage over the court. There is no such thing ordinarily as a permanent technical advisory staff attached to a court except perhaps for a legal staff, yet a court is frequently called upon to deal with technical questions. The kind and degree of technical advice to be gleaned by the courts from the often conflicting opinions of the experts presented on either side or from temporarily appointed court advisors are quite a different matter than the assistance which a commission may obtain through the experience and studies of its own permanent technical staff.

This leads to another point now much in controversy and which will affect the development of our procedure and organization in the ensuing years. This is the question of division of powers, particularly the often repeated proposition that in many proceedings the commission, or at least members of its organization, act in the dual capacity of prosecutors and judges. There is a movement which has for its purpose the separation, more or less complete, of these functions such that, for instance, in a proceeding to bring about a rate reduction, the same personnel shall not prosecute the matter and later sit in judgment upon it. Apparently this looks reasonable enough. In practice it is not so simple to conform to this principle and still to preserve one of the public advantages of commission regulation.

It should not be overlooked that the proceedings before a regulatory tribunal have something the aspect of investigations as well as of a trial of contested causes. It may be a questionable move, from the viewpoint of public interest, to go so far as to bring about a situation where the commissioners or trial examiners passively receive such evidence as is laid before them and exercise no initiative in the way of inquiring into the matters at issue. In fact it is one of the fundamental and distinguishing characteristics of our procedure that the commission is not a mere referee between a prosecutor and a defendant.

It may be that the future will show us some way to achieve some degree of separation, probably within the staff and organization of the commission, between the functions of inquisition, prosecution, and adjudication, but I consider it unlikely and in fact undesirable that this go so far as substantially to deprive the commission and its examiners of initiative or to remove from the commission's proceedings the aspect of investigation.

The relations between the various state commissions and the agencies of the Federal government have in some respects been rather strained during recent years but it is hardly likely that the rapid development which we have witnessed in this field could have been brought about without some friction or cross-purpose. Here, particularly in matters of conflict of jurisdiction, perhaps some of us think that once again the pendulum has swung rather far to one side and that we may expect to see some motion in the other direction. The fundamental fact is, however, that since we have some forty-eight state governments and one national government, we have state lines, and have interstate commerce, there must be both state and Federal agencies in the field and there must be estab-

lished some line of demarcation between the two. It is very questionable to many of us whether that line of demarcation is satisfactorily established at this time.

The concept of interstate commerce, in some of its present applications, would have astonished the founders of our Constitution. It is not my purpose to enter upon a discussion of this rather controversial point but merely to suggest that there is now a strong sentiment in favor of the proper recognition of local state control in matters which are essentially of local state interest and that in the refinement and development of this important field of law and governmental science, this sentiment will undoubtedly make itself felt.

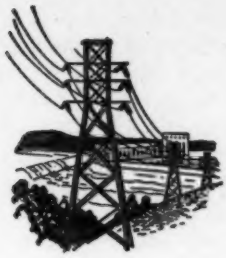
PURPOSELY I have refrained from attempting to prophesy as to specific things which we may see done during these ensuing postwar years, or of the particular problems the commissions may face, or of their treatment of those problems. I do envisage very definitely a rapid and substantial progress in the refinement of this important branch of administrative law in which we, as state commissions, are engaged, a work which, as before said, the Illinois Supreme Court has compared with that of the early common-law judges. I envisage also growth and improvement within the commissions and their staffs, and with respect to their jurisdiction and powers, all in keeping with the growing dignity and importance of their functions and work. I also envisage a better adjustment between state and Federal agencies, and with other public bodies in the same field, to the end that we may all proceed in harmony in this important work through these coming critical years.

Three Landmark Decisions of the U. S. Supreme Court On Utility Regulation

MUNN *v.* ILLINOIS, *decided in 1876, upheld the right of the state to fix rates for a business "affected with a public interest" (in this case a grain elevator). Based upon a legal distinction, written by the great Lord Chief Justice Hale nearly three centuries ago, between such "public callings" and* "JURIS PRIVATI" *(private property), this decision placed the foundation for utility regulation in American jurisprudence upon the same historical background as the common law of England.*

SMYTH *v.* AMES, *decided in 1898, laid down the principle that rates for utility services may properly be limited by the states, under the Federal Constitution, provided they yield to the owners a reasonable return on the "present fair value" of the properties devoted to public service but not exceeding the value of the service. The decision has been variously construed by courts and commissions through the years. It has led to a long controversy as to whether the original cost of the properties or their value if reproduced at the time of the inquiry, or some intermediate or combination judgment figure, should be used as the so-called "rate base."*

HOPE NATURAL GAS CASE, *decided in 1944, delegated the jurisdiction and control of regulatory methods as to fixing utility rates to the special commissions set up by law to exercise such jurisdiction. Confronted with the increasing conflict between advocates of cost as distinguished from valuation methods, the court refused to follow or be bound by either formula and allowed the regulatory commissions similar liberty of action. Federal courts, under this decision, will only interfere with commission rate orders where the "end result" (regardless of method employed) can be clearly shown to injure the utility's owners and endanger its ability to continue in public service.*



The Service Industries

Services, declares the author, operate to make both primary production and industry more effective and more efficient—fallacy with respect to labor in post-war planning—new life and scope for the great American economic machine.

By C. W. KELLOGG
PRESIDENT, EDISON ELECTRIC INSTITUTE

THE electric utility business is classified as one of the "service industries." In estimating post-war prospects it seems desirable to consider the status of this and other similar industries in the general economy of the country.

To the average industrialist who prides himself on being a real producer, it may at first glance seem somewhat presumptuous on the part of electric utilities or other so-called "service industries" to dilate (as perhaps they are prone to do) on their relative importance in the scheme of things. On second thought, however, the industrialist would doubtless realize that the relative position of the many service industries today is very similar to that of manufacturing industry itself a century ago, in that both are but facets of the complicatedly cut jewel of a modern economy. Each facet represents one particular way in which over-all costs are saved to the whole community by the subdivision of effort; each subdivision, whether consciously or unconsciously, giving to the body politic the values arising from expert skill, technology, and mass production.

Nineteenth Century Developments

AT the beginning of the last century the population of the country was predominantly rural and employment was nearly all on the farm. There were no transportation and communication services as we now know them and little manufacturing as we now understand it. Most of the people were engaged in raising food and fiber and the services of most of them were required to feed and clothe the people. Then gradually the development of manufacturing and transportation made the production of food so effective that a

continually diminishing proportion of the population was needed on the farm. Also, with the passage of time, the numbers required to finance industry, to build its plant, and to sell its output grew so fast that by 1900 only 38 per cent of the nation's employed were engaged in the primary production work of agriculture, mining, and fisheries. In that same year 28 per cent were engaged in manufacture and construction and 34 per cent in the "service industries."

Rather than to try to describe further in words the developments since the beginning of the twentieth century, they are shown in tabular form on page 21.

The high lights of this table are worth some study and reflection. The three years chosen were: 1900 as representing conditions at the turn of the century; 1929 as the peak year of the boom of the twenties and representing about a third of a century of development; and September, 1943, as the time of the highest total employment in the nation's history. (As this is written, the latest month available [March, 1945] showed 2,330,000 less employed than in the peak month.) Those in the armed forces are omitted from the table because they are not engaged in economic production.

Primary Production

THE first point that strikes the eye is that at the end of the first third of this century the proportion of those employed that were engaged in primary production was about two-thirds what it was in 1900. This great change was due to the greater use of artificial fertilizers and mechanized farm operation, with farm electrification doubtless playing some part. On the other hand, in the fourteen years ending with 1943 the number of electrified farms increased over fourfold to 2,527,000; yet the change in the proportion of all labor engaged in primary production changed but little during that 14-year period.

Services Grew Faster Than Manufacturing

DURING the early part of the century the proportion of those employed whose work was devoted to manufacturing industry went from 28 per cent to 30 per cent—a range of about 7 per cent, while the proportional employment in the service industries went from 34 per cent to 45 per cent—a range of about a third. Considering the enormous growth in the value of manufactured products during these twenty-nine years (from 12 to 68 billions) it might at first seem paradoxical that relative employment in manufacturing grew at so much slower a pace than that in the service industries. On further reflection, however, the result appears clearly inevitable from what we know occurred during the period in question.

In industry the period was characterized by a great increase in the output per man. This followed from the greater use of machinery and the development of mass production methods; but both were made possible from the much greater use of power, principally electric power, in the factories of the nation. The threefold increase which occurred from 1900 to 1929 in the value of manufactured product per man-hour was accompanied by an increase of 116 per cent in the horsepower used per man. It has been shown

that the size of the national income per capita bears a close relation to the horsepower per man in industry. It has also been demonstrated that output and safety are both increased by higher levels of illumination.

What the Services Can Contribute

From the great growth in the volume of industrial output in the first part of the century arose a corresponding need for greater sales capacity to distribute this output to the people. This brought into greater development the agencies of transportation, communication, financing, and trade involved in the vast distribution process and these are service industries. The growth of the per capita national income during the period 1900-29 from $212 to $654 meant more money to spend and more leisure in which to spend it, all of which called for more employment in the services. So the greater growth in the proportion of work applied to such industries becomes

EMPLOYMENT IN THE UNITED STATES
(In thousands)

	1900		*1929*		*September, 1943(a)*	
	Number	*% of Total*	*Number*	*% of Total*	*Number*	*% of Total*
I *Primary Production*						
Agriculture	9,552		10,539		11,720	
Mining	653		1,067		688	
Fishing and Forests	166		267		195	
Total	10,371	38%	11,873	25%	12,603	24%
II *Industry*						
Manufacturing	6,090		11,059		16,399	
Construction	1,639		3,340		1,650	
Total	7,729	28%	14,399	30%	18,049	34%
III *Service*						
Service Industries	3,942		8,724 (b)		10,051 (b)	
Trade, Distribution, and Finance	3,224		8,007		7,404	
Transportation	1,355		2,465		2,598	
Public Utilities	276		1,167		1,026	
Miscellaneous	481		1,002		1,432	
Total	9,278	34%	21,365	45%	22,511	42%
Grand Total	27,378	100%	47,637	100%	53,163	100%

Source: "Economic Almanac," National Industrial Conference Board 1944-45, pp. 44, 46, and 50.

Notes

(a) All-time high.
(b) This does not include persons in armed forces: 1929— 279,000
Sept. 1943—11,300,000
It does, however, include other governmental employees as follows:

	1929	*1943*
State and Local	1,500,000	1,722,000
Federal	550,000	2,820,000
Total	2,050,000	4,542,000

a logical result of known developments. It is thus seen that the services operate to make both primary production and industry more effective and more efficient. They also, from the requirements they need or stimulate, add materially to the volume of manufacturing.

Stability of Services

ANOTHER interesting point is that services represent something the people will buy if possible more or less regardless of other changes, except only the ability to pay for them. That is, they represent the satisfaction of daily or regular needs. It is observable how slight relatively was the decrease in the proportion of employment applied to services from even such seismic effects as those produced by the war. With 67 per cent of industrial production in 1943 going into the war effort and with over 11,000,000 persons actively engaged in the armed forces and with total industrial production in that year twice as large as that of the highest previously recorded peacetime year, five-twelfths of those employed were still engaged in the service industries.

A Fallacy in Postwar Planning

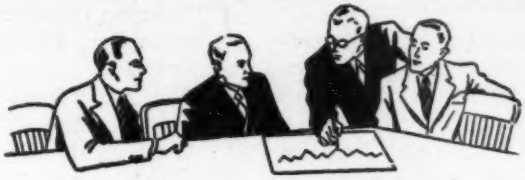
THE figures as a whole indicate a fallacy that has grown up in connection with the discussion of postwar plans.

The statement has been made, and repeated many times, that we must have 60,000,000 jobs after the war and that if "industry" cannot or does not furnish them, the government will have to step in and do so. It has been pointed out, on the other hand, that for this purpose there is no such entity as "industry"; its labor requirements are simply the sum of the needs of thousands of separate concerns for enough people to turn out the product each believes it can sell.

But beyond this, the figures in the table show at a glance that even if "industry" were an entity, it could not possibly, by itself, running at fullest wartime capacity, furnish more than a third of the jobs involved in the whole national economy. The other two-thirds of the jobs, even under war conditions, must come from primary production and the services. Hence, to put the whole burden of postwar employment on industry is to fly in the face of all our economic experience, either in the present war or in the last great boom that preceded it. Even if one felt convinced that industry were the mainspring of much of the employment in the other two-thirds of our body politic, it would still be most unrealistic to expect industry itself to furnish all the jobs—which has been the basis of the fallacy in question. Surely the way to get American industry to make the greatest contribution to postwar prosperity is to take off as many threats as possible and leave it the maximum of economic freedom.

Government Employment

THE suggestion that government step in to help out in the postwar employment situation raises in a very poignant way the general question of government employment. The footnote to the table indicates that even regular government employees since 1929 have grown in number much more rapidly than total employment. Omitting those in the armed forces, regular government employment increased from 4.5 to 8.5 per cent of to-



Economic Pattern of the Country

"THE economic pattern of our country is seen . . . as one of great subdivisions of effort whose over-all efficiency has been such that a quarter only of the workers are needed to produce all the food and most of the minerals we need, leaving the other three-quarters free to exercise their ingenuity and skill in producing goods or services which will appeal to buyers on the basis of utility or economy."

tal employment in the relatively brief period of fourteen years. (During the peak of relief work in 1936 this ratio reached 11.3 per cent.) No one questions the value and necessity of government; but equally no one can question that its cost is a burden on the economy. This leads to two further questions:

1. What justification has there been for doubling the relative size of the governmental burden on the economy as has been done in the last half generation; and

2. whether more government employment after the war will not prove a millstone rather than a life preserver in keeping the economy afloat.

Utility Experience Reflects General Conditions

INTERESTINGLY enough, even during the past war year, with industrial production at unprecedented levels, the revenues of the electric light and power industry were divided as to source, between industry and all the balance of the economy, in almost exactly the same proportion as is shown in the table with respect to jobs. Also the nonindustrial part of the electric utility business has always been the most stable, and this for the reason that it caters to daily human needs that go on steadily, as human life does, somewhat independent of booms and depressions.

This particular part of the electric utility business has continued to grow during the war in spite of the unavoidable scarcity of the materials required for extending service lines or for manufacturing the apparatus required for the utilization of electricity. The extent of this handicap to growth can be measured by the experience with a group of five major electrical appliances, of which 8,660,000 were sold in 1939 and 832,000 in 1944. This backlog represents one of the many ways in which the service industries react on manufacturing industry.

War Effort Shows Analogous Labor Subdivision

THAT the relatively small proportion of our working population engaged directly in industry is but the inevitable result of our complicated economic setup, is confirmed by the distribution of men in the prosecution of the war. For the war itself the manufacturing industry becomes a service, in which (based upon proportionate output) approximately 11,000,000 are directly engaged in war work. Even among those other 11,000,000 or more in the armed forces, tremendous numbers are needed for construction and for transporting, handling, and distributing the vast supplies of ammunition, food, construction materials, gasoline, clothing, and other matériel used by the fighting men. Even among the line units there are the engineers, signal corps, medical corps, ground crews, maintenance men, and others too numerous to mention, all of whom represent "service" for the front line men. It appears likely, therefore, that out of all those engaged in the war effort, the proportion engaged in actual combat is no greater than those in industry are of the total working forces of the nation.

Summary

THE economic pattern of our country is seen, therefore, as one of great subdivisions of effort whose over-all efficiency has been such that a quarter only of the workers are needed to produce all the food and most of the minerals we need, leaving the other three-quarters free to exercise their ingenuity and skill in producing goods or services which will appeal to buyers on the basis of utility or economy. Granting that our natural resources are probably superior to those contained in any other section of the earth of the same area and climate, this eminently successful pattern has clearly been the result of applying to those natural resources the ingenuity and energy of a free and intelligent people. In spite of the terrible wastage of lives and treasure the war has brought to us, it has also, by its dire necessities, proved a tremendous stimulus to invention and productive energy. In the years following the war these may be relied upon to give new life and scope to the great economic machine we have developed in this country. These forces, however, are like steam in a boiler: they cannot produce their full power with the throttle half open or with the brakes on.

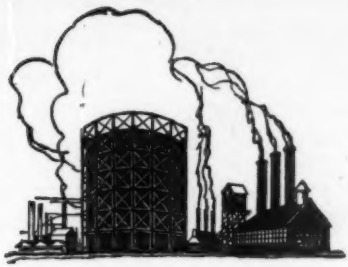
Hello Girl's Job Becomes Position

HOW to attract prospective employees was illustrated by the lyrical tone of a Louisville, Kentucky, want ad recently.

"Speech weaver wanted," the advertisement began, then it really got going:

"In this absorbing job you become a spinner of fate; you influence the lives and destinies of important people everywhere. The order for ships and guns that MUST *go through is at your finger tips . . . The hurried, nervous farewell of a soldier to his girl must clear through you . . . The heart-tilting talk of a wounded boy, just come back, and his mother, depends on your skill as a telephone weaver of speech."*

That last phrase let the cat out of the bag—a switchboard operator was wanted.



The Regulatory Outlook for The Natural Gas Industry

It would appear, declares the author, that the pendulum of social and economic experimentation has completed the left wing swing and that it is not too much now to anticipate legislation in which the rights of the industry will be recognized with the same zeal that formerly attended only the prescribing of its limitation.

By E. HOLLEY POE

THE doleful predictions of the prophets of depletion have lately been sounding in the ears of natural gas men, just as they have assailed those of oil producers for the past twenty-five years. That both industries have greeted their periodic pronouncements with polite but realistic incredulity is not to be wondered at, since year after year has seen both oil and gas reserves expanded and extended by new exploration and discovery, far beyond the withdrawals for any normal period.

But while these expressions of economic and political solicitude have in the past been largely ignored, as being principally the preoccupations of the incompletely informed, the time has now come when natural gas and the petroleum producers view with lively concern the direction of, and the success attending, the efforts of Federal bureaucracy to attain a complete and final sovereignty over natural gas from the bottom of the well to the burner tip.

The brief but inspiring history of natural gas growth since the start of its present expansion period in the early twenties, is not one to awaken misgivings in any rational mind. The acceptability of the fuel, the acceptance of its entrepreneurs by the consumers, and the ability of the industry, all are regarded as guaranties of an ever-expanding and ever more valuable service so long as the fuel supply remains as boundless as present discoveries constantly tend to indicate.

Since the beginning of its present expansion period natural gas has experienced an intensive and an extensive growth and development that has elevated it to its present place of major

importance in the national fuel and power scheme. During this, the period of its greatest growth, it has survived both boom and depression, changing business conditions, a vacillating and veering politico-social philosophy, and a climaxing world war. The only question that now disturbs those whose labors have already made it great is whether the industry can survive the ministrations of those who have but lately discovered themselves to be its bureaucratic and regulatory guides.

HISTORICALLY the record of service and growth is exemplary: By the end of 1943 the capital assets of the industry were $2,742,368,000. The aggregate of natural gas gathering, transmission, and distribution lines had risen to a total of 210,300 miles. New communities of 5,000 population or over to receive the benefits of straight natural gas for domestic, commercial, and industrial requirements were increased by 86 in the years from 1927 to 1939. Hundreds of additional localities benefited from natural gas to the extent that their previous supplies of manufactured gas were enriched by the addition of the natural fuel to the end of delivering a product of greater heating value. As a result of this activity, natural gas now reaches into 33 states and the District of Columbia; serves 9,189,000 customers, or approximately 40,000,000 people.

The impact of events during such a period of rapid expansion has severely tested and proven beyond peradventure the inherent soundness of the industry from a financial viewpoint. It has emerged from the category of a risky venture capital business to one of sound investment status.

Natural gas reserves, the basic resource of the industry, are known by every test of modern geology to be adequate for at least fifty years,[1] with more new resources being discovered every year. Reduced to its essence, the whole operation of the industry consists in developing these reserves to marketable perfection and transporting the product to the markets that require it.

ONE-TIME Secretary of War, the Honorable Newton D. Baker, summarized the average citizen's views regarding natural gas when he said, apropos of its introduction into Cleveland: "I have no wisdom and I have no scientific knowledge of natural gas. I know that so far as the city of Cleveland is concerned it is very doubtful whether anything has ever happened in this city—any one thing—which did more for its prosperity; did more for its beauty; did more for the convenience, the comfort, the happiness, and perhaps the health of the people who live here, than did the introduction of natural gas."

The natural gas business is not particularly subject to changing consumer habits, because it sells only an essential and stable commodity at rates that are low, generally fixed by law, and almost entirely on a cash basis.

Despite all of the obvious advantages inherent in a simple business operation, serving a satisfied and stable clientele, the industry is beset by other difficulties that within recent years have

[1]Testifying before the special U. S. Senate committee investigating petroleum resources on June 19th, E. DeGolyer, noted geologist of Dallas, Texas, estimated known reserves for larger fields (of 20 billion cubic feet or more) at 140 trillion cubic feet, and as much as 200 trillion, if smaller fields were also considered.

become distressingly prejudicial to continued expansion, to enhanced service, and to lower gas rates. The natural gas industry has come to realize that its most trying problem, and the one that poses the most alarming threat to good natural gas service, is the very Federal agency that exists for the enhancement and improvement of gas and electric service—the Federal Power Commission.

THE Federal Power Commission had been assigned many and difficult statutory duties in the electrical field under the Public Utility Act of 1935. The regulation of interstate natural gas pipe lines which fell to it in 1938 involved problems different in many ways. After seven years of performance it is not unfair to characterize its administrative policies under the Natural Gas Act as unnecessarily bureaucratic and to that extent ineffectual in the public interest, expensive and harassing to the industry.

In 1942 the commission asked Congress for certificate powers that have since been used to regulate prices and service of direct pipe-line sales of natural gas to industrial plants. The Natural Gas Act by its terms applies only to wholesale sales, *i.e.*, "sales for resale." Congress adopted the only amendment to the Gas Act thus far made, granting the power to issue certificates of public convenience and necessity before extensions or additions may be made to pipe lines. The power was also given to "attach reasonable conditions" to certificates. By these amendments the discretionary might of the commission was enormously increased.

State regulation, by state commissions, has been in the past largely a matter of establishing, defending, and enforcing certain rate structures believed to be fair and equitable to the utility and the public alike. Differences in viewpoint, when they have arisen, have, of course, given rise to litigation between utilities and state regulatory bodies. But these differences have, in recent years, been composed in conference, in ever-increasing numbers, and even those that have gone to the courts have in the end been accepted without rancor by either side.

THERE probably was a time, immediately subsequent to the passage of the Natural Gas Act, when the state commissions regarded the new jurisdiction given to the FPC over natural gas transmission as a potential aid to them in plugging up the regulatory gaps that were inherent in state jurisdictions. But any such hopes as were then entertained have been dissipated

¶ "SINCE *the beginning of its present expansion period natural gas has experienced an intensive and an extensive growth and development that has elevated it to its present place of major importance in the national fuel and power scheme. During this, the period of its greatest growth, it has survived both boom and depression, changing business conditions, a vacillating and veering politico-social philosophy, and a climaxing world war.*"

now by the spectacle of the FPC seeking, not to strengthen and support the hand of state regulation, but to supersede and outmode it at every turn, and with respect to every vital natural gas function, from production to end use.

Although the regulated companies are required to obtain specific authority before "abandonment" or "construction," the commission is much more than a year behind in its certificate cases,[2] and, in spite of a solemn adherence to its cumbersome and unrealistic procedure, the commission itself is well aware that this has broken down of its own weight. The straitjacketed control the commission is attempting to enforce is illustrated by its interpretation that it constitutes "abandonment of facilities" when a worn-out compressor is replaced.

There has been many a legal opinion expressed that the Natural Gas Act does not require a hearing for every nut and bolt that is added to the pipe line—the manner in which the commission is interpreting it now. There are many who believe that notice of applications received would be adequate in most cases and no hearing held unless question or request is made. Yet, to date, there appears to have been no single effort made on the part of the commission to streamline its own procedures in an effort to reduce this admitted backlog of more than a year of cases.

But its procedures have become more lengthy and expensive.

FOUR important applications for certificates in the past year have been argued before the commission *en banc* —and partially heard by the commission, sitting with the trial examiner. Neither of these involved service of new territory but only increased quantities of gas through interstate lines to markets already served. Hearings dragged on for weeks and thousands of pages of transcript resulted. It was aptly remarked by one who attended the two most recent of these hearings that "the commission is engulfed in a whirlpool and unconscious of its plight."

Not alarmed by this pressing accumulation of unnecessary vexations the commission has moved in on the highly competitive field of production, claiming the authority to apply "rate base" principles to the gas-production operations of regulated companies—and, to the consternation of the entire petroleum industry, has been sustained (albeit at five to four) by the Supreme Court! By clever use of its broad rule-making power it has devised its own legislation to control the "end use" if not the price of industrial gas. It attaches the condition to a certificate authorizing new construction limiting the amount of gas permitted to move through the pipe lines to present customer requirements, and no new customer may be attached without another certificate. The commission also requires even the smallest local distributing company deriving its gas supply from outside the state to comply with its Uniform System of Accounts and numerous requirements for reports.

THE Natural Gas Act contains no intimation that the Congress intended the commission to deal with problems of fuel competition. Never-

[2] Statement of the commission to House Appropriations Committee, January 11, 1945. Hearing Record on Independent Offices Appropriation Bill 1946, p. 304.

Growth of Natural Gas Industry

"HISTORICALLY the record of service and growth is exemplary: By the end of 1943 the capital assets of the [gas] industry were $2,742,368,000. The aggregate of natural gas gathering, transmission, and distribution lines had risen to a total of 210,300 miles. New communities of 5,000 population or over to receive the benefits of straight natural gas for domestic, commercial, and industrial requirements were increased by 86 in the years from 1927 to 1939."

theless, as if Congress had assumed and delegated the authority to control the use of all energy resources, the commission for two years has permitted unlimited participation of coal and labor interests in every important hearing on applications for certificates of public convenience and necessity. Furthermore, the conditioned certificates limiting or preventing sale of gas to industrial plants are a complete victory for these determined enemies of natural gas. That much of this is done in the name of conservation in no way mitigates the fact that it is actually a very long step toward regulated economy in the production and use of competitive fuels.

In the face of these improper administrative practices, and the virtual making of new laws as the result of expanded court interpretations of old limitations, there has developed a mutuality of interest as far as the state regulatory bodies and the natural gas industry are concerned.

To be sure the great gas-producing states of Kansas, Louisiana, and Texas are at the moment proclaiming a policy of embargo upon exportation of natural gas. But natural gas, in spite of unprecedented war consumption, has been discovered and produced far more rapidly than it has been used. Dedication to intrastate use solely would be as impractical and unprofitable as it is legally impossible. The Supreme Court has repeatedly struck down statutes aimed at a similar purpose. There are eighteen states dependent upon these three for the benefits and convenience of natural gas and reasonably unrestricted commerce between the producers in the Southwest and eager consumers in at least eighteen

states will be mutually profitable for years to come while fuel technology forges ahead with further utilization achievements in the public interest.

It is not surprising, therefore, that the clamor has been as vigorously voiced by the gas states as by the gas industry, for the curbing of administrative agencies. Both now seek to aid in the development of a new and rational formula for exercising the necessary controls over natural gas. Their goal is to achieve a delineation of all proper authority under the doctrine of states' rights, and the principles of private initiative and enterprise, to the ultimate benefit of gas producers and gas consumers alike.

To this meeting of minds has also come the best and most representative thought of the oil industry—the petroleum producers recognizing that the problems of gas regulation are so intertwined with those of petroleum production as to make the two practically inseparable.

The demand is for new legislative acts in the affected states and for a new amendment of the Natural Gas Act by Congress that will define the essential regulatory boundaries that are required for the adequate protection of the public interest and the stability of the industry as well.

Any new acts, whether state or Federal, should be confined to the minimum necessary regulation, and should not be viewed as the prelude to a greater regimentation of the natural gas industry. If honestly approached, the solution of the problem should be fairly simple. A supplement to the "Preliminary Report on a National Oil Policy" has recently been drawn up by the Petroleum Industry War Council. The Independent Petroleum Association, American Gas Association, and others, have all concurred in that statement which points the way toward a national policy on both oil and natural gas.

The proposals here made are in accord with these same principles and are advanced in the belief that they will be found acceptable to the natural gas industry, the oil producers, and also to the regulatory bodies of most producing states. And if the FPC is fundamentally concerned with the enhanced realization of the asset value of natural gas to the nation, the points laid down should be acceptable to the commissioners as well:

1. Confine the authority of the Federal regulatory agency to natural gas transported in interstate commerce for resale.
2. Repose jurisdiction over all aspects of gas operation, up to the point of its delivery into the interstate movement, with the state regulatory agencies.
3. Limit any regulation of distribution and utilization matters to the authorities of the states in which the gas is consumed.
4. Establish in principle the doctrine that in regulating the selling price of natural gas the Federal agency be required to recognize all reasonable factors relating to the commodity value of the gas and the investment in transmission and other facilities.

It would appear unnecessary for a restatement by statute of the principle that the function of the Federal government under the Constitution is to regulate the commerce between the states, and not within them severally. Congress had no more intention of giving the Federal Power Commission juris-

diction over gas production or gas utilization than it had of giving the Interstate Commerce Commission jurisdiction over the production and the use of commodities shipped over the railroads.

But the same Constitution that provides these safeguards for states' rights also sets up prohibitions against states abusing these rights at the expense of sister commonwealths. Thus the states must be prepared to forego the doubtful privilege of attempting to confine natural gas within their own borders when a market ready, able, and willing to buy at an equitable price exists in other states.

Effective conservation-wise exercise of state jurisdiction over the production, processing, and gathering of natural gas can be assisted by Federal encouragement of coöperative legislation such as that which made possible the Interstate Oil Compact Commission.

The question of end-use limitation is one that is best solved by the least amount of legislation, even in the consuming states where jurisdiction should rest. The cost of the delivery of gas to commercial and domestic users is indissolubly associated with the economics of a high load factor, made possible by interruptible and dump-gas contracts. Only those who are competent to rebuild the whole economic foundation of long-distance transmission should aspire to tamper with the end-use phases of its operation.

SOCIALLY viewed, if the intelligent use of natural resources by the present generation promotes a sounder social and industrial order for those who are to follow, there can be no legitimate brief for abstaining from their usage in the interest of preserving an extra pittance of those resources for posterity. Had every pioneer in America decided to await the advent of the prefabricated plywood house there might not have been so much wasteful use of prime virgin timber in the building of frontier cabins. But who today would question the dividends that present generations have collected on that early "economic waste"?

The whole principle of regulation should be to limit it to the minimum consistent with the public interest, and it must, if it is to achieve this ultimate desideratum, give encouragement to the operation of the natural gas and oil businesses on sound principles of private enterprise functioning in a free economy.

The opportunity of presenting the natural gas case may now come at an

¶ "STATE *regulation, by state commissions, has been in the past largely a matter of establishing, defending, and enforcing certain rate structures believed to be fair and equitable to the utility and the public alike. Differences in viewpoint, when they have arisen, have, of course, given rise to litigation between utilities and state regulatory bodies. But these differences have, in recent years, been composed in conference, in ever-increasing numbers, and even those that have gone to the courts, have in the end been accepted without rancour by either side.*"

earlier date, and under broader auspices than were anticipated within the scope of the Federal Power Commission's now postponed Docket G-580 investigation. The Special Committee Investigating Petroleum Resources, appointed by the United States Senate under the chairmanship of Senator Joseph C. O'Mahoney, has indicated that inquiries into all phases of natural gas operation will be on its agenda.

THE investigation should prove constructive in determining whether it is necessary in the public interest that the oil and gas industries operate under the administrative absolutism that has prevailed in recent years, or if the enunciation of a basic policy, supported by necessary legislative changes would not better suffice.

It is a favorable sign to observe that the oil and gas industries stand as one in the matter of the fundamental issues at stake, and the Senate committee is already evoking pledges of industry coöperation that the Federal Power Commission had never been able to elicit.

It would be rash, indeed, to predict categorically the outcome of these investigations, or the legislative end product that will ensue. Natural gas has increasingly shown a readiness to seek a fair solution of all problems according to law. It has always entertained a genuine apprehension of overregulation and the destruction of initiative inherent in its enforcement.

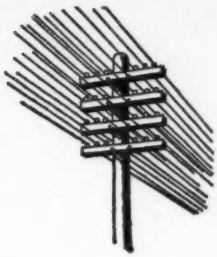
There was a time when public opinion was easily guided into supplying the impetus for new excursions by government into business regulation. And all too often industry itself condoned and canonized practices that created this opinion, so that the resulting restrictions that were imposed were in unmistakable obedience to public demand.

But now it would appear that the pendulum of social and economic experimentation has completed the leftward swing in its slow and inexorable arc. As the threat of aggression from without pales under the withering blight of our war achievement, the thoughts of the people turn to the restoration of those principles that have so long been the target of an insidious aggression operating from within.

IT is not too much now to anticipate legislation in which the rights of industry will be recognized with the same zeal that formerly attended only the prescribing of its limitations. And should this result in a rewriting of the Natural Gas Act into legislation whereby the interests of all are rationalized and safeguarded, natural gas, which achieved such spectacular progress during the past twenty years, may move out into even greater spheres of usefulness and public service in the decades that lie ahead.

¶ "SECURITY *against economic disaster will never affect the individual incentive of Americans, because their wants are far above any minimum standard of living, however high. But it is equally true that, while security may not destroy incentive, it neither creates nor stimulates it. Security measures cannot provide for Americans the dynamic force which gives them confidence in their economic future.*"

—THURMAN W. ARNOLD,
Associate justice, United States Court of Appeals for the District of Columbia.



The Bell System's Job Ahead

A fascinating glimpse at alert telephone planning for the public needs covering not only provision for the restoration, refinement, and expansion of normal services disrupted by the war but also preparation for, among others, such services as television transmission and mobile radiotelephone communication.

By KEITH S. McHUGH

VICE PRESIDENT, AMERICAN TELEPHONE AND TELEGRAPH COMPANY

As long as the war against Japan makes it necessary, the Bell system will continue to put war equipment and communications needs above everything else. However, with a gradual relaxation of material and man-power controls in prospect, telephone people are looking ahead to the nation's postwar communication requirements and making preliminary engineering and organization plans to the extent that war conditions permit.

It is clear that the Bell system's job for the immediate postwar years will be a large undertaking, requiring the full energy and skill of the telephone operating companies, the research laboratories, and the manufacturing organization. It will consist of making up lost ground and of moving ahead into areas of growth in which improved operating techniques and new services will have a leading part.

For example, we must catch up on the very large number of applications for service held by the telephone companies due to lack of facilities. We must provide relief for overloaded local exchange plant. The network of long-distance lines must be strengthened and extended. Long-range programs of service betterment, interrupted by war, are to be resumed. Improved operating methods such as direct dialing of long-distance calls by operators will be extended. Rural service will be greatly increased. New services will be introduced including provision of television networks and mobile radiotelephone services.

Clearing Up Held Applications for Service

The most compelling part of the job before us is to fill the applications for telephone service now held in

the files of the Bell companies due to shortages of telephone apparatus and to get back as speedily as possible to a basis of supplying service to all who want it when they want it.

As most people know, the shortage of telephone apparatus stems from the fact that telephone equipment manufacturing facilities, materials, and man power have been, and at present still are, devoted chiefly to the production of communication and electronic equipment urgently needed by the armed forces.

It has been possible to manufacture some telephones and some central office and other equipment to meet the most urgent needs, but these, so far, have not been in quantities sufficient to offset continuing demand. In fact, applications for telephone service being held for lack of facilities have been increasing at a rate of over 60,000 a month. At present there is a total of about 2,000,000 held applications. The majority are held for lack of sufficient central office equipment and, to a minor extent, outside plant. However, there is still a substantial number held for lack of telephone instruments only.

Restoration of Plant and Service Standards

A SECOND aim, closely allied with the first, is relief for the present seriously overloaded condition of telephone plant, and restoration of quality of service to normal wherever it has suffered from wartime conditions.

In order to provide a service for as many people as possible, large numbers of central offices were loaded beyond their normal capacity. Many other temporary expedients were adopted to spread the service as far as possible with facilities at hand. For example, large numbers of old-type telephones which normally would have been retired were pressed into service; many people who preferred higher grades of service were required to take party-line service; private branch exchange switchboards were adapted to supplement central office facilities. To relieve these conditions, to make up the shortages of equipment in central offices, and to provide adequate room for growth, large quantities of additional switching equipment, cable, etc., will have to be manufactured and installed.

Similarly, temporary expedients were adopted to increase the capacities of long-distance lines. For example, certain carrier techniques have been employed as an emergency measure by means of which many needed circuits were quickly made available, but at the expense of some naturalness and intelligibility. As soon as practicable, long-distance service standards must be restored to normal. This will involve not only addition of a very large number of long-distance circuits to relieve congested routes and improve speed of the service; it also will call for elimination of the emergency measures.

Strengthening the Long-distance Network

THE Bell system's 5-year program of coaxial cable construction is of importance in the over-all plans for strengthening the long-distance network. This 6,000- to 7,000-mile extension program announced in the spring of 1944 is well under way. By the end of this year the Bell companies expect to have 2,000 miles of the cable manufactured and at least three-fourths of this mileage in the ground.

With present associated equipment, a pair of coaxial conductors can accommodate as many as 480 telephone conversations simultaneously.

In its plans for a trial installation of the radio relay method of transmission, the Bell system is exploring an additional means of supplementing the long-distance network. The radio relay method applies to radio the same principle of amplification at intervals along a circuit that is employed in long-distance telephone lines. The trial is to be made over a route now laid out between New York and Boston. If present hopes are realized in the New York-Boston trial, it may be that radio relay will find wide use in the Bell system. The system is interested in putting to use the best transmission media available and it will employ in the future wire or radio, or combinations of them, whenever advantageous.

Other measures to strengthen the long-distance network include the replacement of heavily loaded open wire lines with cable.

Replacement of Manual Equipment By Dial

As soon after the war as it can be done, Bell system companies will actively resume their programs of replacing manually operated switchboards with dial equipment for local exchange service. When this program was interrupted at the start of the war, about 65 per cent of Bell system telephones were dial operated.

Operator Toll-line Dialing

EXPERIENCE gained with toll-dialing networks heretofore placed in service has been very satisfactory. It is planned to develop this method further and extend its use widely. Toll-line dialing by an operator permits her to dial the called party in another city without the assistance of intermediate operators. Use of dial equipment in this way for long-distance service points to improved speed of service and operating economies.

Rural Service Expansion

THE Bell system has plans for bringing telephone service to an additional million rural homes within three to five years after men and materials are available. This will mean practically doubling the number of farms with telephones in Bell system territory, to cost about $100,000,000.

Extensive surveys are being made to determine the kind of telephone service wanted by present and potential rural customers. The rural program includes extending facilities to areas not now reached, improving service, modernizing facilities, and utilizing new techniques and economies to do the job. The over-all aim is to

¶ *". . . applications for telephone service being held for lack of facilities have been increasing at a rate of over 60,000 a month. At present there is a total of about 2,000,000 held applications. The majority of these are held for lack of sufficient central office equipment and, to a minor extent, outside plant. However, there is still a substantial number held for lack of telephone instruments only."*

find ways and means to furnish satisfactory telephone service for farmers at a cost that more of them can afford. Among several developments which tend to reduce costs of construction are high-tensile strength steel wire, which permits longer spans and saves poles, and a specially insulated wire that may be buried by means of a plow where the terrain is favorable.

The Bell system is at work on the development of a carrier system for sending telephone conversations over rural power lines. This method is expected to be useful in extending telephone service to farms which are along power lines but not near existing telephone lines. Trials of the power-line carrier system are being planned in coöperation with power companies and the Rural Electrification Administration. Radiotelephony is also expected to be used as a means of serving remotely situated rural communities.

Television Network Facilities

AMONG the new services to be offered by the Bell system in the postwar period is television program transmission network service. The new facilities now being incorporated in the telephone plant to augment the long-distance networks are going to be eminently fitted to do the television network job. For example, a pair of coaxial conductors, when suitably equipped, can satisfactorily transmit the broad bands of frequencies that are required for television. The coaxial cable planned and under construction on north-to-south routes and across the continent has six or eight coaxial conductors. It can therefore be regarded as the beginning of a nation-wide television program network.

Development work which was under way when the war suspended operations in this field looks toward equipment capable of transmitting bands of 7,000,000 cycles or more over coaxial conductors. With this, it would be possible to transmit a television band of 4,000,000 cycles, plus several hundred telephone conversations simultaneously over the same pair of conductors, or to transmit an even broader television band if television standards should require it.

Radio relay, to be tried out by the Bell system as mentioned earlier, may prove to be important in the development of television networks. It is intended to be a wide-band transmission medium. The Bell system's trial of radio relay is planned to determine its efficiency, dependability, and economy in comparison with wire-line transmission. At present it seems reasonable to look forward to coaxial cable and radio relay systems supplementing each other in extending television networks to various parts of the country.

The Bell system's experience and skill in operating 135,000 miles of program circuits for radio broadcasting, as it now does, will prove of great value in television network operation. The present radio program transmission service is incorporated in the same plant and handled by the same operating force responsible for the Bell companies' 10,000,000 miles of long-distance telephone circuits. Generally, the same force will also handle television transmission.

Mobile Radiotelephone Services

PLANS are now under way for another new Bell system service which will be introduced and rapidly

Operator Toll-line Dialing

"EXPERIENCE gained with toll-dialing networks heretofore placed in service has been very satisfactory. It is planned to develop this method further and extend its use widely. Toll-line dialing by an operator permits her to dial the called party in another city without the assistance of intermediate operators. Use of dial equipment in this way for long-distance service points to improved speed of service and operating economies."

expanded after the war. It is a general mobile radiotelephone service which will provide 2-way communication with motor vehicles or other mobile units such as boats and barges. Trial installations of mobile radiotelephone service are planned first for some of the larger cities. Later a service will be tested to serve vehicles traveling on the more important intercity highways.

Bell system urban mobile service plans are based on surveys made in cities throughout the country to determine the prospective need for and use of the service. Applications already have been filed with the Federal Communications Commission for authority to install the transmitting and receiving stations in a number of cities. Initially, the principal users of urban mobile service are expected to be operators of large fleets of vehicles, such as trucking concerns and the like.

By the combined use of wire lines and radio, operators of vehicles equipped for 2-way mobile service may talk with any telephone connected with the Bell system network. When a businessman wants to call the driver of a certain truck, he will pick up the telephone on his desk and ask for a special operator. He will give her the vehicle's number or designation, she will signal the vehicle, and the driver will answer over his dashboard telephone. A push-to-talk button on the handle of his instrument will enable him to switch from receiving to sending. It is planned that the occupant of an equipped vehicle can originate calls simply by picking up his telephone and pushing the sending button. This will signal the vehicular operator who then connects him with his office, or any other, telephone.

In some instances, where overseas

radiotelephone service was discontinued due to war conditions, the service has already been resumed. In other instances similar steps will be taken as soon as possible. Further, the service will be expanded not only to additional foreign countries, but more circuits will be added on many present routes. Resumption of radiotelephone service to ships at sea is also planned. Radiotelephone service available to shipping in coastal harbor areas and on inland waterways will be expanded. It is also intended to explore the possibilities of other radiotelephone service, including service to railroad trains and airliners.

Complexity Will Challenge Ingenuity, Skill

THESE notes have outlined only the general shape of the most pressing postwar tasks. There are others. For example, such service betterment programs as the following are to be resumed as soon as it is possible to do so: removal of old-type telephones and their replacement with modern sets, replacement of manual PBX's by dial, supersedure of older types of wiring plans by key-sets, replacement of old dials which are noisy, modernization of public telephones, and so on.

Of all the problems involved, not the least is that of keeping the public informed as to the complexity of the change-over program and the time it will require.

The over-all undertaking is going to cost a lot of money. It will probably be necessary to expend a billion dollars almost immediately after the war, and another billion within a very few years. Large amounts of new capital will be required. To attract this money in competition for the investors' dollars, the system's earnings must be maintained at adequate levels. This fact takes on tremendous importance when we face, as we have briefly done here, the many things which must be accomplished in the immediate postwar years.

The problems associated with changing over to peacetime development and production will be very real at the Bell Telephone Laboratories and the plants of the Western Electric Company. Similarly, the process of catching up and of doing the many things that we want to do will challenge the ingenuity and skill of each of the telephone companies of the Bell system.

In the postwar period, as in the war years, we will continue to need the considerate help and coöperation of the public. We will have to call upon the men and women of the Bell system to supply imagination, energy, and courage as freely then as they give it now. Our capacities will be taxed to the utmost but we look ahead confidently.

Power in the Rôle of Martha

"MUCH attention has been focused on the spectacular production records of war plants and we all acknowledge their accomplishments with sincere admiration. But behind the manufacturers' record of achievement is the basic factor of electricity supply—the medium and agent that has been available in sufficient quantities to make all this production possible. Its story may not appear dramatic, but it has been such an essential factor that its maintenance has been vital."

—CHARLES Y. FREEMAN,
Chairman, Commonwealth Edison Company.

Government Utility Happenings

AGITATION for making publicly owned utilities bear a large share of tax responsibility received support last month, as a result of an Ohio Supreme Court decision holding Cleveland's municipal transit system subject to taxation. Governor Frank J. Lausche of Ohio has already intimated that the decision will affect not only the Cleveland transit property but other municipally owned utilities, such as water, light, and steam. There is also possibility that municipal utilities might be subjected to the state's corporation franchise tax and the state utility excise tax—the latter of which is 3 per cent. In its opinion, the Ohio court stated:

> There can be little doubt that the transportation of property from place to place by means of a transit system consisting of street railways or bus lines is in no sense a governmental function and where a municipality owns or operates such a system for the convenience of the public it is engaged in a private competitive business for profit, and while such property is publicly owned, it is not used exclusively for a public purpose.

Asserting it was common knowledge that the city had already paid off almost half the revenue bonds in its three years of operation of the utility, the court said: "We think that is cogent evidence that the city has entered the field of private competitive business for profit."

* * * *

THE Republican congressional victory in Montana was somewhat disappointing to supporters of the Missouri Valley Authority project. State Senator D'Ewart, who won a 7-to-6 victory over his Democratic opponent to succeed the late Representative O'Connor in the normally Democratic eastern Montana district, campaigned openly against MVA. He announced that his election indicated that eastern Montana voters are opposed to MVA.

U. S. Senator Murray, Democrat of Montana, author of the MVA Bill, took such an active part in campaigning against D'Ewart that his absence from Washington was responsible for the delayed hearings on the MVA Bill before the Senate Irrigation and Flood Control Committee. Hearings will not begin until September 15th.

* * * *

ACTION of the Senate on June 21st in confirming the nomination of Claude R. Wickard to the post of administrator of the Rural Electrification Administration is not generally regarded in Washington as certain to put an end to the controversy which has been raging about internal affairs in REA headquarters. Because the party lines supporting the administration held fairly firm, the former Secretary of Agriculture was approved for his new job by decisive vote over a hopeless minority, consisting mostly of Republican Senators.

But the final confirmation vote of 56 to 6 was preceded by some debate on June 18th and June 19th in which Wickard's critics were led by Senator Shipstead (Republican, Minnesota). The Minnesota Senator inserted in the *Record* his own report for the minority of the Agriculture and Forestry Committee, to the effect that apprvoal of Wickard was a "complete repudiation of the following four actions of the United States Senate." These were listed by Senator Shipstead as follows:

1. The unanimous report of the subcommittee of the Senate Agriculture Committee indicting the administration of REA by Mr. Wickard as Secretary of Agriculture and recommending that REA be separated from control of the Agriculture Department as quickly as possible.

2. The Senate committee's vote upon the request of 813 REA co-ops to restore the independence of REA by removing it from Agriculture Department control.

3. The action of the Senate Agriculture Committee in unanimously reporting a bill to increase the lending authority of REA, which included an amendment to separate REA from the Department of Agriculture.

4. The unanimous passage on May 14, 1945, by the Senate of the same bill after having been "advised in great detail of the maladministration of REA by Mr. Wickard."

Senator Shipstead also inserted in the *Record* editorials from the *St. Louis Post Dispatch* calling for an investigation of the Wickard appointment and calling upon Mr. Wickard to "remove himself from consideration" or, as an alternative, for Senate defeat of his confirmation. Other editorials from the *St. Louis Star-Times* referred to former Secretary of Agriculture Wickard's "bungling" in REA matters and President Truman's appointment of him as unwise.

THE so-called "rebellion" among REA co-ops which have been critical of REA management since the resignation of Harry Slattery, and have been in favor of restoring REA independence, still continues to echo in the form of letters to Congressmen and Senators. Whether Mr. Wickard, now that his appointment has been confirmed, can dissipate this criticism, by his administrative efforts, is a source of speculation among Washington analysts. So far, the agitation does not show any signs of dying down. A recent poll taken by the National Rural Electric Coöperative Association on whether REA should be divorced from Agriculture's control is said to be running heavily in favor of "independence."

However, it is to be expected that with Mr. Wickard confirmed in office, there will be a tendency on the part of REA co-ops to give up quarreling with the top official controlling REA purse strings.

Another repercussion in the confirmation of Mr. Wickard as REA Administrator was believed to be the lessening of chances that the House would approve the Lucas Bill already passed by the Senate. This bill (S 89) included the controversial Shipstead amendment to divorce REA from Agriculture. In fact there was some indication that the Truman administration had joined REA efforts to sidetrack the Lucas Bill with an alternative measure providing more liberal appropriation for REA. Early in June the Budget Bureau forwarded to the House Appropriations Committee a request (H Doc 208) for $160,000,000 for REA, to be included in an urgent deficiency bill for the coming fiscal year. This item of $160,000,000 would be in addition to $80,000,000 already provided in the regular Agriculture Department appropriation, thereby making the total of $240,000,000, together with some additional allowance for administrative expenses.

This is much more than REA would get under the Lucas Bill. REA Deputy Administrator Nicholson explained that the increase (REA originally asked for $230,000,000 which was "shaved" by Budget to $160,000,000) was sought in view of the recent WPB order removing restrictions with respect to electric line extensions in rural areas. A heavy backlog of these projects "all ready to go" has been accumulating during war years.

This deficiency appropriation for REA would cut some of the ground from under the "rebel" REA coöperatives, which have been protesting Wickard's nomination to head REA, by placing them in the position of fighting against more appropriations for REA. Present prospects are that the Lucas Bill, although unanimously approved by the

Senate, will be tied up in the House Interstate and Foreign Commerce Committee until the House gets a chance to pass the urgent deficiency bill to give REA the more liberal appropriation without any strings attached. After that, it is likely that no further effort will be made to restore REA independence and the Lucas Bill will die in committee.

* * * *

A CONGRESSIONAL fight over Interior Department appropriations is the result of the Senate's action last month in restoring $39,000,000 to the Interior Department Appropriations Bill. As passed by the House, this bill carried $101,242,628. The Senate action not only restored virtually all funds originally requested by the Budget Bureau under President Roosevelt but includes two controversial items of special utility interest which had been eliminated by the House. One of these was an item of $115,300 for planning of the Delta steam power plant; the second, $100,000, was also to plan transmission lines from the Shasta dam—both part of Interior Department's program to promote sale of power as part of the Central Valley project. The debate waged against these two items in the Senate indicated that there is some fear that the Interior Department is attempting to drive the opening wedge for entering the transmission and distribution phase of electric power operations to supplement its already tremendous stake in hydroelectric investment.

On June 18th the House sent a message to the Senate announcing its disagreement with the Senate amendments making the Interior Department appropriations in question. Thereupon the Senate, on motion of Senator Hayden (Democrat, Arizona), voted to insist upon its amendments and carry the difference to a conference with the House. The president pro tem of the Senate appointed the following members to represent the upper chamber in the conference: Hayden (Democrat, Arizona); McKellar (Democrat, Tennessee); Thomas (Democrat, Oklahoma); O'Mahoney (Democrat, Wyoming); Green (Democrat, Rhode Island); Guerney (Republican, South Dakota); Burton (Republican, Ohio); Wherry (Republican, Nebraska).

The House won a similar conference clash with the Senate in the last session. Representative Johnson (Democrat, Oklahoma), who led the House Appropriations Committee fight against the Interior Department, indicated that he would stay in the House until the bill is disposed of, although he was nominated by President Roosevelt and confirmed by the Senate for a judgeship on the court of custom appeals in New York.

* * * *

BONNEVILLE Chief Raver is defending Bonneville Administration's low wholesale power rate of $17.50 per horsepower year. Congressional critics are contending that not only is the investment allocated in both Bonneville and Grand Coulee to power development less than it should be, but also that income from the $17.50 rate is not enough to pay the cost of the development with proper charges during the time allotted for amortization. The published hearings of the House Appropriations subcommittee indicate some subcommittee members contend that supporting data supplied by the Bonneville Administration on this point are unsatisfactory. Representative Johnson (Democrat, Oklahoma), subcommittee chairman, was particularly critical, and Representative Jones (Democrat, Ohio) claims that only a congressional investigation will give the people proper light on the subject.

The ICC freight rate decision and alleged private utility opposition are two latest arguments used by Raver to justify Bonneville's wholesale power rate. In a recent speech before businessmen in Missoula, Montana, Raver said:

> The Bonneville Power Administration has long recognized the importance of correcting inequities in our freight rate structure, and we have consistently urged that our present high class rate levels be investigated.

He asserted that the Bonneville Administration's $17.50 wholesale power rate is the "strongest magnet in the

world" for attracting new industries to that section, and that upon its maintenance "depends, in a large measure, the answer to whether the Pacific Northwest will go forward . . . or revert to the semicolonial status which for so long has been the unfortunate lot of this section."

Referring to private utility opposition, Raver said the Bonneville rate is "under . . . vicious attack"—there being a "concerted movement on foot to . . . raise it to $33 per kilowatt-year." (The latter figure is the rate for Boulder dam power delivered in Los Angeles and the contemplated rate for power from Shasta dam delivered in San Francisco.) Raver added that "the attempt to increase our wholesale rate is nothing more nor less than a scheme dreamed up by the private utility companies to prevent the expansion of our transmission system under the $17.50 rate."

* * * *

CONTINUED progress in the disposition of its interests in utility properties is being made by the Cities Service Company with sale of one property expected to be completed by the first of the month, an offer having been received for another, and negotiations under way for an additional subsidiary, it was learned last month. No new developments were reported in connection with Arkansas Natural Gas Corporation, although eventual divestment of this unit was expected. Next development scheduled in connection with Arkansas was a hearing in New Orleans in October on an appeal from an order of the Securities and Exchange Commission.

Sale of East Tennessee Light & Power Company to the Tennessee Valley Authority for $3,680,000 was expected to be completed by July 1st. Proceeds would be used to reduce bank loans of Cities Service Power & Light Company, of which East Tennessee is a subsidiary. Agreement for sale of the property became effective December 31, 1944, and a memorandum agreement was signed on March 3, 1945. The closing date of sale was expected within a short time. A bid has been received from an engineering firm for the Federal Light & Traction subsidiary, Trinidad Electric Transmission, Railway & Gas Company, located in Colorado, and the near-by Dawson division of New Mexico Power Company, also a Federal Light & Traction subsidiary. Negotiations were understood to be under way for the sale of the Sheridan County Electrical Company, another subsidiary of Federal Light & Traction Company.

Cities Service recently obtained an extension of one year from May 5, 1945, within which to comply with orders in accord with the Public Utility Holding Company Act. Final divestment of Cities Service from the public utility field was not expected until Cities Service Power & Light holdings have been reduced to its Ohio companies permitted to be retained by the SEC.

* * * *

MATTHEW WOLL, vice president of the American Federation of Labor, last month called the St. Lawrence waterway and power project a scheme to utilize "millions of American dollars to employ Canadian labor" and said that he was certain an "overwhelming majority" of AFL members would oppose it. Speaking at a luncheon meeting of the New York State Conference in Opposition to the St. Lawrence Project in the Pennsylvania, Mr. Woll said that the project would adversely affect 650,000 American coal miners, as well as railroad workers, merchant seamen, and water front workers in Buffalo and other large American lake cities. Canadian industry now buys nearly 17,000,000 tons of American coal annually, he said, but even with only a 14-foot channel down the St. Lawrence "we have been steadily losing a part of the Canadian market for our coal."

As to the power phase of the project, he said he was convinced that if there should ever be a power shortage in the United States, additional facilities could be made available quickly and economically by the erection of steam plants. Carroll B. Huntress, vice president of Republic Coal & Coke Company, presided.

Wire and Wireless Communication

A NEW version of the so-called Hill Bill to provide new rural telephones and rehabilitate existing farm phone systems was introduced by Senator Hill, Democrat of Alabama, on June 6th and referred to the Senate Committee on Agriculture and Forestry. The new Hill Bill (S 1115) differs from the earlier Hill Bill (S 73) chiefly in that it would amend the Rural Electrification Act so as to authorize the administrator of REA to make loans for rural telephone facilities. The earlier Hill Bill would have set up a Rural Telephone Administration to operate independently of REA.

Other than proposing that rural telephone loans be dispensed by REA, the new Hill Bill makes only two changes from the earlier Hill measure. One of these would be to insure that nothing in the act would interfere with the jurisdiction of the state commissions over telephone companies. The other change would give the administrator of REA discretion to recommend the installation of either land wire telephone facilities or voice carrier systems or radiotelephone facilities.

Other provisions of the earlier Hill Bill are included in the new version. These provide for loans at 1¾ per cent, not to exceed thirty-five years, with preferences to be made to the following classes of borrowers: people's utility districts, co-ops, mutual companies (including REA co-ops), states, territories, municipalities, and other political subdivisions; and small telephone systems rendering service to not more than 10,000 subscribers.

BOTH versions of the Hill Bill define "rural area" to mean any areas including cities, villages, etc., having a population not more than 10,000. Both require that "at least 20 per cent of the loans allotted yearly to each state be made available for loans to telephone companies where total subscribers are less than 1,000." The new bill authorizes REA loans up to $50,000,000 a year from the RFC, plus a direct appropriation to the REA for such loans of $25,000,000 for the fiscal year ending June 30, 1946.

Several routine provisions of the earlier Hill Bill (such as those providing for foreclosure and for nonpartisan activities) are omitted from the new Hill Bill, because they are already included in the REA Act which the new Hill Bill would become a part of, if enacted. A companion bill was introduced in the lower chamber (HR 3501) by Representative Patrick (Democrat, Alabama).

* * * *

THE National Telephone Panel on June 9th unanimously approved the voluntary application of the American Telephone and Telegraph Company, Long Lines Department, for a $4-a-week general wage increase and a shortening of the wage progression schedules from ten to nine years for approximately 1,300 traffic department employees in the Philadelphia and Pittsburgh exchanges.

The panel's approval was based on the wage stabilization policy for the telephone industry as outlined in the panel's policy report and unanimously adopted by the National War Labor Board.

Under the new wage schedule, the rates for the traffic department operators will range from a starting rate of $23 a week to a weekly maximum of $34.

The panel also approved the agreement of the company and the Federation of Long Lines Telephone Workers, independent, representing the employees, to have June 18, 1944, as the retroactive date for $1 of the general increase and a retroactive date of January 15, 1945, for the remaining $3, as well as for the shortened progression schedule.

The union's demand for a wage increase originally was certified as a dispute to the National War Labor Board. Subsequently, however, the parties agreed on the wage issue and submitted a voluntary application.

* * * *

THE War Production Board last month authorized increased installation of new facilities by telephone and telegraph companies. This action was taken through amending U-3. Except for buildings, these communications concerns may install facilities of any dollar value on an unrated basis, without prior approval by WPB. In the case of buildings, those requiring up to $25,000 of materials may be constructed on an unrated basis without specific authorization. The limit previously was $10,000.

The amended U-3 eliminates assignment of a CMP allotment symbol or preference rating for delivery of material to be used in building construction.

* * * *

REAPPOINTMENT of former Governor Norman S. Case of Rhode Island as a member of the Federal Communications Commission for another 7-year term beginning July 1st was a matter of considerable doubt. Although President Truman must appoint a Republican to the post at that time, congressional sources reported that Senator Wallace H. White of Maine, Republican Senate leader, has recommended a candidate of his own.

Senator Austin, Republican of Vermont, was reported sponsoring the appointment of ex-Governor Wills of Vermont.

* * * *

THE Federal Communications Commission *en banc* on June 5th adopted an order directing the Commercial Cable Company to suspend all charges and credits with respect to its plan of accounting for the reduction of its capital, pending submission of proof as to the amount properly includible in its capital surplus accounts and, in the interim, ordering certain accounting entries to be made. The order instituted an investigation into the accounting performed and the accounts, records, and memoranda kept by the company with respect to all transactions affecting its surplus accounts.

* * * *

THE program of tests of FM transmission in the 44- to 108-megacycle region of the spectrum which was started in connection with the Federal Communications Commission's allocation studies will be continued to obtain propagation data needed in determining standards for making station frequency assignments in all services in this portion of the spectrum.

The need for this type of information was revealed in the recent allocation hearings. While there was much opinion testimony regarding propagation characteristics of frequencies in this portion of the spectrum, there was comparatively little factual information available, it was said.

The FCC said that among the specific problems for which these tests should develop information are the problem of the proper distance between stations operating on the same and adjacent channels and the field intensities required for the various services under different conditions. Following the tests in the 44- to 108-megacycle region, the commission

plans to extend the studies in coöperation with industry to higher portions of the spectrum.

Eleven pioneer manufacturers of frequency modulation radio equipment have filed a protest with the FCC against the "delay in determining the final FM channel allocations," it was announced in New York early last month. Those who signed the protest, which was sent to the FCC a few days after a meeting of the manufacturers, were representatives of Ansley Radio Corporation, Espey Manufacturing Company, Freed Radio Corporation, Garod Radio Corporation, General Electric Company, Meissner Manufacturing Company of Mount Carmel, Illinois, Piolot Radio Corporation, Scott Radio Laboratories of Chicago, Stromberg-Carlson Company, Rochester, and Zenith Radio Corporation, Chicago.

The FM concerns cited that "further postponement on the part of the FCC represents a serious threat to the postwar future of the entire radio industry," and may create widespread unemployment.

Protests already had been filed with the FCC recommending prompt action in assigning definite bands for FM and television.

* * * *

A SIGNIFICANT type of experimentation looking toward the development of a broad-band microwave radio relay system was approved last month when the Federal Communications Commission granted the Raytheon Manufacturing Company construction permits for five experimental radio relay stations to be installed between Boston and New York city. The stations will be located at New York city; Lexington, Massachusetts; Bristol and Tolland, Connecticut; and Webster, Massachusetts.

The construction permits authorize five new experimental Class 2 point-to-point radio stations to develop new techniques for the transmission and relaying of high definition and color television programs, high-fidelity FM programs, and telegraph, telephone, and facsimile communications. An important phase of the experimental program provides for the development of a system of aeronautical safety communications, aircraft traffic control, and an automatic reporting service on the positions of aircraft which would be provided simultaneously with transmission of FM and television programs and other point-to-point communications.

The stations will operate with a maximum power of 100 watts on frequency bands to be assigned by the commission's chief engineer.

The radio relay system proposed by Raytheon is similar to those under construction at Boston and New York by the American Telephone and Telegraph Company and at Washington, D. C., New York city, Schenectady, and New Scotland, New York, by International Business Machines Corporation and the General Electric Company. Similar experimental grants had been made earlier by the commission to the Federal Telephone & Radio Corporation for construction of three experimental Class I radio stations near New York city to develop new radio relay systems and to the Western Union Telegraph Company for a chain of four broad-band ultra- and superhigh frequency relay stations.

In authorizing the experimentation by Raytheon between New York and Boston, the commission pointed out this does not mean that it has made a determination that it will hereafter authorize the company to use these stations commercially or to engage in the activities of a communication common carrier for hire.

* * * *

PRIVATE communications firms of the United States will be given Federal aid in competing with British government-controlled systems, Paul Porter, chairman of the Federal Communications Commission, told a press conference in Rome recently.

"I see no reason, however, why the United States should maintain government control over the communications setup," he declared.

Mr. Porter accompanied a Senate group to Europe to study communications conditions there.

REPRODUCTION OF THE ORIGINAL OF THE FIRST FULL-POWERED STATE COMMISSION UTILITY RATE ORDER

It is T H E R E F O R E ORDERED, That the petitioner in this case, the La Crosse Gas and Electric Company, in lieu of the rates it now charges for electric current for lighting and power shall substitute the following maximum rates.

Lighting Rates

The service charge on all lighting and installations shall be one dollar and eighty cents per year per sixteen candle power lamp, or equivalent demand, on one-third of connected installatio er when one-third of the connected installation is considered to be the demand.

The meter rate for a consumption equivalent to sixty hours or less per month per each installation shall be seven and one half cents per kilowatt hour.

The meter rate for a consumption equivalent to more than sixty hours per month per each installation shall be six cents per kilowatt hour.

The meter rate for "Patrolled Service" - or for signs and other installations with fixed hours of use shall be five cents per kilowatt hour.

Power Rates

The service charge shall be twenty-seven dollars per year per horse power demanded.

The meter rate for less than five hours per day per horse power demanded shall be five cents per kilowatt hour.

The meter rate for over five hours, but not exceeding ten hours per day per horse power demanded shall be three cents per kilowatt hour.

The meter rate for over ten hours per day for horse power demanded shall be two cents per kilowatt hour?
Dated this 14th day of September, A. D. 1907.

RAILROAD COMMISSION OF WISCONSIN

Seal

By J. H. Meyer
Halford Erickson
John M. Roemer

Financial News and Comment

By OWEN ELY

Supreme Court to Pass on "Death Sentences"

THE decision of Chief Justice Stone to qualify himself has permitted the Supreme Court to obtain the necessary quorum of six members to hear the four important cases on its calendar, involving constitutionality of § 11 of the Holding Company Act. Appeals against SEC "death sentences" have reached the court during the past two years from North American Company, American Power & Light, Electric Power & Light, and Engineers Public Service. Assuming that the court gives these cases the priority on its docket which their importance warrants, decisions might be forthcoming early in 1946.

The court may settle such issues as the following: (1) Is the SEC correct in interpreting the loosely worded provisions of § 11 to mean that a holding company system must be limited to properties in a given state, and states adjacent thereto; (2) can a system (such as Engineers) be forced, within a relatively short time, to choose the system it wishes to retain, with the SEC making the choice if the company refuses to do so; (3) must important systems such as Electric Power & Light and Columbia Gas surrender either their gas or electric interests; (4) what minor services can be considered "reasonably incidental"; (5) does the Federal government have power to dissolve a corporation? (One of the briefs to be filed with the high court holds that only a state has this power.)

One important argument which may be advanced by the utilities is that industrial as well as utility holding companies should be subject to the act. North American Company contends that, if Congress has constitutional power to order compulsory divestiture of utility properties, it is equally authorized to fix the number of factories that an industrial concern might be permitted to have, or the number of branches that a mercantile establishment could maintain.

IN one of its earlier briefs the SEC expressed grave doubt whether there was any advantage in managing operating properties from a "remote financial center," and also pointed to "the dangers accompanying concentration of power in the hands of a small group." But these same arguments could well be used (and have been used in the past in connection with antitrust investigations) against industrial companies and railroads. They might also apply against the Federal government itself, which does not hesitate to regulate from Washington conditions in the remotest hamlet of the country.

Utility Market Continues in Uptrend

UTILITY stocks have remained surprisingly strong in recent weeks and this is reflected in a decline in the average yield of 49 electric-gas operating company stocks to 5 per cent compared with 5.17 per cent in April. (See table, page 48.) The average stock is now selling at 15.7 times the latest published share earnings. The range varies widely —from 8.8 for Puget Sound Power & Light to 23.7 for Hartford Electric Light. The ratio for Puget Sound is

probably too low, since that company's earnings include nonrecurring tax savings. Adjusting for this factor the ratio might approximate 10—about the same as for its neighbor, Mountain States Power. Both companies are in the "pub-

ELECTRIC-GAS OPERATING COMPANY STOCKS

	Where Traded	Price About	Div. Rate	Yield About	Recent Share Earn.	Price-Earn. Ratio
Arkansas-Missouri Power	O	14	$ .50	4.3%	$1.57	8.9
Black Hills Power & Light	O	23	1.20	5.2	1.82	12.6
Boston Edison	B	40	2.00	5.0	2.19	18.3
California Electric Power	C	10	.45*	4.5	1.03	9.7
Central Hudson G&E	C	10	.48	4.8	.56	17.9
Central Illinois E&G	O	25	1.30	5.3	1.95	12.8
Central Vermont P. S.	O	21	1.08	5.1	1.54	13.6
Cleveland Elec. Illum.	C	40	2.00	5.0	1.99	20.1
Commonwealth Edison	S	31	1.40	4.5	1.80	17.3
Community Public Service	O	35	2.00	5.7	2.55	13.8
Connecticut Light & Power	O	55	2.40	4.4	2.77	19.8
Connecticut Power	O	46	2.25	4.9	2.33	19.7
Consolidated Edison of N. Y.	S	31	1.60	5.2	2.00	15.5
Consolidated Gas (Baltimore)	C	78	3.60	4.6	4.47	15.5
Duke Power	C	93	4.00	4.3	4.75	19.6
Delaware Power & Light	O	22	1.00	4.6	1.18	18.7
Derby Gas & Electric	O	24	1.40	5.8	1.29	18.6
Detroit Edison	S	23	1.20	5.2	1.01	22.8
Empire District Electric	O	19	1.12	5.9	1.66	11.5
Fitchburg G&E	O	46	2.50	5.5	2.44	18.8
Hartford Electric Light	C	58	2.75	4.8	2.45	23.7
Houston Lighting	S	77	3.60	4.7	5.21	14.8
Idaho Power	S	36	1.60	4.5	2.42	14.9
Indianapolis Power & Light	S	25	1.20	4.8	1.77	14.2
Lynn Gas & Elec.	O	90	5.00	5.6	4.92	18.3
Michigan Public Service	O	18	1.00	5.6	1.66	10.9
Missouri Public Service	C	26	1.00	3.9	1.83	14.2
Missouri Utilities	O	18	1.00	5.6	1.29	14.0
Montana Dakota Utilities	C	12	.50	4.2	.73	16.4
Mountain States Power	C	28	1.50	5.4	2.64	10.6
New Orleans Public Service	O	29	1.40	4.8	2.10	13.8
Newport Electric	O	27	1.60	5.9	2.03	13.2
Pacific Gas & Electric	S	40	2.00	5.0	2.17	18.4
Pennsylvania Water & Power	C	70	4.00	5.7	4.67	15.0
Philadelphia Electric	S	26	1.20	4.6	1.55	16.8
Public Service of Colorado	O	32	1.65	5.2	2.23	14.4
Public Service of Indiana	O	27	1.00	3.7	2.00	13.4
Puget Sound Power & Light	C	17	1.20	7.1	1.94	8.8
Rockland Lt. & Power	O	9	.50	5.6	.56	16.1
San Diego Gas & Elec.	O	15	.80	5.3	.94	16.0
Sierra Pacific Power	O	24	1.40	5.9	1.52	15.8
Sioux City Gas & Elec.	O	40	1.60	4.0	2.69	14.9
Southern Calif. Edison	S	31	1.50	4.9	1.73	17.9
Southwestern Public Service	O	23	1.00	4.4	1.74	13.3
Tampa Electric	C	33	1.60	4.9	2.09	15.8
United Illum.	O	49	2.00	4.1	2.14	23.0
West Penn Power	O	25	1.20	4.8	1.60	15.6
Western Mass. Cos.	O	31	1.60	5.2	2.32	13.4
Wisconsin Elec. Power	O	16	.70**	4.4	1.02	15.7
Averages				5.00%		15.7

S—New York Stock Exchange. C—New York Curb. B—Boston Exchange. O—Over counter.

*On June 1st a quarterly payment of 15 cents was made compared with 10 cents previously; if a 60-cent annual rate is assumed yield would be 6 per cent.

**Less Wisconsin 3 per cent tax.

lic power zone" in the Northwest, and the stock prices are affected by fears that Bonneville and the PUD's may make renewed efforts to acquire distributing facilities from private companies in this territory.

During the past quarter utility stocks have advanced faster than industrials, and about as fast as the rails. Utility operating stocks of the more conservative type have gained about 7 per cent and holding company issues 16 per cent, compared with 10 per cent for the rail average and 3 per cent for a large group of industrial stocks. These utility averages, however, do not reflect some of the extreme movements in the holding company group.

Some very low-priced issues, such as Central & South West Utilities, North American Power & Light, United Corporation, Electric Power & Light, American Power & Light, etc., have enjoyed large advances percentagewise, some of them now selling 4 or 5 times the levels of early this year. Some of the holding company preferred stocks, involved in pending plans, have also gained rather sharply.

It is difficult to justify current quotations for some of the low-priced holding company issues on the basis of pending or probable integration plans. Possibly some purchasers are hopeful that the Supreme Court or Congress will eliminate the worst features of the Holding Company Act, so that the low-priced equities will recover greater "leverage" than they enjoy under the recap formulas (which usually give the junior stock 5-15 per cent of assets). Unfortunately, some purchasers merely act on tips that these low-priced issues are "going up"—such rumors have been heard frequently in the financial district of late. Human nature being what it is, some misguided enthusiasm is probably unavoidable, but the utility companies should do their best to discourage unfounded rumors and gossip used to support unwarranted values.

The SEC recently issued a warning with respect to certain Associated Gas issues.

SEC Permits Larger Funded Debt for NEPA

New England Power Association filed a simplification plan with the SEC in March, 1944, but the commission on June 1st proposed certain changes. The SEC agreed with the company's informal proposal that the funded debt of the new holding company be increased from $60,000,000 to $85,000,000, in order to eliminate entirely a proposed issue of $71,347,000 preferred stock. However, it specified that the holding company bonds must have an adequate sinking fund and effective restrictions with respect to dilution of the debt coverage.

This is another example of the commission's more liberal views, over the past year or so, with respect to recapitalization programs. The formula of 50 per cent debt, 25 per cent preferred stock, and 25 per cent common, indicated in the original proceedings against New England Gas & Electric and in some other cases, has been largely abandoned as too rigid.

The SEC now permits a heavier debt ratio where this is necessary to simplify the holding company capital structure, or to facilitate refunding operations in the case of a heavily capitalized operating company. In this connection the commission has doubtless recognized three points: (1) the fact that the present Federal tax system penalizes companies with low debt, (2) the heavy readjustment burden imposed by substantial plant write-offs, and (3) the desirability of limiting holding company capital structures to two classes of securities.

In the case of New England Power, the *pro forma* consolidated balance sheet presented with the plan stated the capital account at $420,400,000, but reference was made in a footnote to write-ups of about $81,900,000. Deducting this amount and the depreciation reserve of $74,900,000 leaves a net figure of $263,000,000, to which could be added current and miscellaneous assets of $40,000,000, making a total of $303,000,000. As expressed in percentages of this amount,

the original and modified plans would be as follows:

	Original	*Modified*
Subsidiaries—		
Funded debt....	27%	27%
Preferred stocks..	7	7
Minority interest .	4	4
Holding Company—		
Funded debt ...	20	28%
Preferred stock ..	23	..
Common (equity)	19	34
	100%	100%

1945 Construction Budget Increases

TOTAL construction expenditures by electric utility companies, municipal plants, and rural coöperatives last year totaled $273,000,000, the lowest figure since the period 1933-35. During the decade 1922-31 annual expenditures averaged $750,000,000, but in the lean 1930's only about $380,000,000 per annum was spent. During 1940-42 expenditures averaged over $600,000,000 annually, but, due to labor and material shortages, dropped to less than half that figure for 1943-44.

For the next twelve months the privately owned gas and electric companies appropriated $405,000,000 for expansion of facilities and equipment, according to a summary in *The New York Times*. This is said to be about 50 per cent greater than the amount spent last year. (The figures are not closely comparable with those quoted above, which included some public power companies and were for electrical plant only.) It was estimated that, if the WPB's recent relaxation of controls on expansion were implemented by available man power and materials, the program for the coming twelve months would have been increased to $600,000,000.

The figures for capital expenditures and budgets vary widely. Thus *Electrical World* in January estimated total expenditures by the electric light and power industry for 1944 at $340,000,000, a figure far in excess of the EEI figure despite the fact that the latter included some public power. It was also about 50 per cent larger than *The New York Times* figure. The *World's* estimate for 1945—$663,000,000—was also far ahead of the *Times* figure.

Figures for some individual systems, as compiled by the *Times*, were as follows:

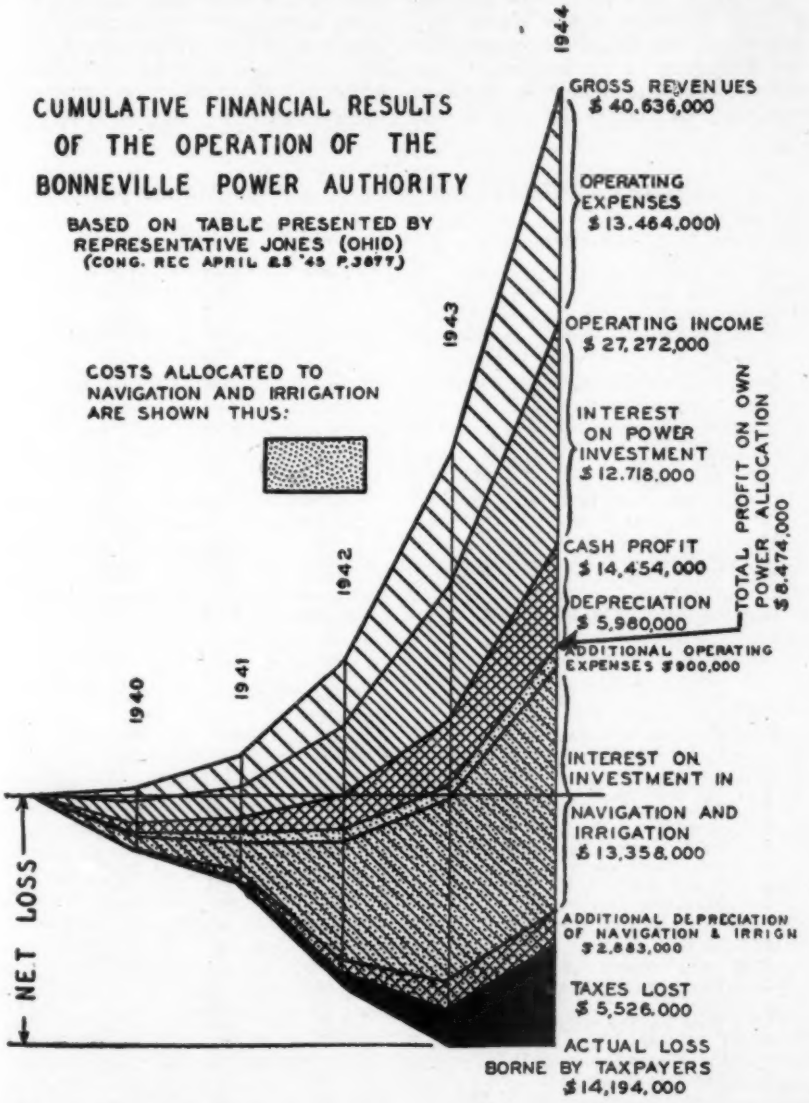
Consolidated Edison	$22,000,000
Public Service of N. J.	12,000,000
Electric Bond and Share Systems	78,415,000
Commonwealth & Southern ..	28,000,000*
North American	25,250,000
American Gas & Electric	23,000,000
Engineers Public Service	4,000,000

* Before the end of 1945.

Puget Sound's Report Stresses Public Power Issue

WHILE the annual report of Puget Sound Power & Light for 1944 appeared only recently, it seems worth waiting for. While it is streamlined with pictures, charts, and "high lights," it also contains unusually complete statistical data, including a 10-year summary of operations and special data on electric rates and taxes. President Frank McLaughlin is "battling" against public power inroads, and instead of ignoring the issue, as some companies might do, he has devoted ten pages of the report to a full and frank discussion of power competition, the PUD's, the Seattle franchise situation, and the proposals by the Bonneville Administrator and by Guy C. Myers for over-all acquisition. The general question of public *versus* private power and the future outlook for government power are also treated. In this connection Mr. McLaughlin quoted at length from the *PUR Executive Information Service* letter of February 23, 1945, which discussed the new tendency to magnify the importance of river basins and stressed Secretary Ickes' desire to acquire control of present and future river developments.

Despite the fact that his own company has extremely low rates (average residential kilowatt-hour revenue 1.7 cents, industrial .7 cents), Mr. McLaughlin combats the arguments of the Bonneville



Edison Electric Institute Bulletin

Administration that cheap power will make the territory a "beehive of industrial activity." He points out that the state of Washington has always had cheap power and that if power were the controlling factor in the location of most industry, its cities would be the most populous in the country. The cost of electricity amounts to only one per cent of the value of the average industrial product, and factors other than power are far more important in determining the location or relocation of the average industry. Electric rates in the large industrial centers of the country are substantially higher than in the state of Washington.

UTILITY SECURITY OFFERINGS OF FIRST HALF OF 1945

Amount (Mills)	*Issue*	*Offering Price*	*Current Price*	*Call Price*	*Yield*
	Bonds				
80	PG&E 1st ref. 3/79	107⅜	106⅜	111	2.71%
50	New York P&L 1st 2½/75	102½	101⅜	105½	2.67
7	Central Vt. P.S. 1st 2¾/75	101½	101⅜	105⅜	2.66
59	Va. E&P 1st 2¾/75	101½	101	104½	2.70
18	Texas Elec. Ser. 1st 2¾/75	101	101¼	103	2.69
27	Texas P&L 1st 2¾/75	100⅜	100½	103⅜	2.72
35	Okla. G&E 1st 2¾/75	101	100½	104¼	2.72
4	Northern Pa. Pwr. 1st 2¾/75	101	101¼	105⅜	2.66
26	Ohio Edison 1st 2¾/75	101	100½	105¼	2.72
35	Tenn. Gas & Tr. 1st 3½/65	102¼	102⅜	104¼	2.82
13	Cap. Trans. 1st & ref. 4/64	100	105⅜	103	3.62
18	Southwest. P. S. 1st 3¼/74	103⅜	104¼	106½	2.90
8	So. Car. Pwr. 1st & ref. 3/75	101⅜	101¼	105½	2.91
5	Tide Water P. 1st 3¼/75	101.48	*	104½	*
14	Cent. Ill. E&G 1st 3/75	103	103¼	107¼	2.82
8	Montana Dak. Ut. 1st 3/65	102⅜	103¼	105½	2.75
4	York Corp. 1st 3½/60	102½	103¼	104½	2.94
1	Tide Water P. Deb. 3⅜/55	100.96	*	102½	*
19	Laclede Gas Lt. 1st 3½/65	102¼	103¼	105¼	3.25
	Preferred Stocks				
4	Florida Power Corp. 4%	101¼	100	106¼	4.00
3	Central Ill. E&G 4.10%	102	102¼	107	4.00
24	New York P&L 3.90%	104	104	107	3.76
5	Southwestern P.S. 4¼%	110½	112½	115	4.24
15	Carolina P&L $5	**	116	110	4.33
8	Dallas P&L $4.50	**	118	110	3.84
18	Central Tel. Co. $2.50	52¼	54½	55	4.59
1	Savannah-St. Aug. Gas 5%	100	103	105	4.87
1	West Va. Water Serv. $4.50	104	105	107½	4.29
8	Tenn. Gas & Trans. 5%	104	105½	108	4.75
3	Calif. Water & Tel. $1.20	27¼	27½	29	4.37
1	Gen. Waterworks 5%	100	101	102½	4.95
6	Associated Tel. 4¼%	22¼	23¼	24	4.84
2	Northland Greyhound 3¾%	100	100	104½	3.75
	Common Stocks				
11	Laclede Gas Lt.	5	6	...	...
1*	Cent. Vermont P.S. ($1.08)	20¼	21½	...	5.00
3	Los Angeles Trans. Lines	6¾	7	...	...
1	Ohio Water Ser. ($.90)	15¼	15¾	...	5.83
1	West Va. Water Ser. ($1)	13½	18½	...	5.43
—	Cal. Water & Tel. ($2)	36	36½	...	5.50
3	Cal. Water Service ($2)	39	38½	...	5.20
3	San Jose Water ($2)	40	40	...	5.00
3	Lake Sup. Dist. Power ($1.20†)	22¾	22	...	5.45
2	Mobile Gas Serv. ($1)	17	18	...	5.56

* No public market.
** Exchanged for old preferred.
† Less Wisconsin tax.

What Others Think

A Chronology of Utility Regulation— Since "PUR," 1915-1945

WHEN the first volume of *Public Utilities Reports* was published in 1915, it ushered in a period of fairly complete regulatory operations throughout the United States. Only eight years previous the states of New York and Wisconsin had set up the first full-powered regulatory commissions. But other states followed so rapidly that by 1915, the birth date of PUR, every state in the Union, with the exception of Delaware, had established some form of regulatory commission having various kinds of jurisdiction over various forms of public utilities. For example, in some states the jurisdiction was limited to carriers. But most of the states had worked out pretty complete jurisdiction by law for their respective regulatory bodies.

Public Utilities Reports, or "PUR," as it has since come to be known in regulatory circles, came into existence because of the need for some centralized reporting system for decisions of these commissions and court appeals therefrom.

True, a number of states had established their own volume reports, but publication was delayed to the extent of a single volume a year and even some of these reports did not contain the full text of the decisions, but merely a summary of the commission's work for the state legislatures. PUR today remains the only national reporting system in the United States exclusively devoted to the publication of decisions affecting utility regulation. Through its thirty years of service it has won the recognition of the bench and bar, as well as the numerous professional specialists in the regulatory field.

A recent brief opinion of the U. S. Supreme Court in a telephone case, for example, found occasion to recite PUR a dozen times.

BY 1915 some basic tenets of utility regulation had been laid down, notably the two landmark cases of Munn *v.* Illinois in 1878, which held regulation of utilities to be constitutional, and Smyth *v.* Ames in 1898, which laid down the rate base requirement for testing validity of utility rates. Courts and commissions throughout the land were just beginning to apply in its various detailed ramifications, the guiding principles of regulation laid down by Justice Hughes in the 1913 Supreme Court decision in the Minnesota rate cases (Simpson *v.* Shepard) 230 US 352. This decision defines generally the regulatory powers of the states and of the Federal government.

In Willcox *v.* Consolidated Gas Co. (1909) 212 US 19, the pattern of constitutional "confiscation" as applied to rate cases had been defined but not refined. In the Knoxville Water Co. Case (1909) 212 US 1, the troublesome factor of depreciation had been recognized.

Here follows chronologically a thumbnail digest of the various important regulatory decisions which have since been handed down in this specialized field of law, beginning with that memorable first volume of PUR:

1915

THE most important case of this year was the Supreme Court decision in Des Moines Gas Co. *v.* Des Moines, PUR1915D 577, which upheld the inclusion of "going concern value" in determining a utility's rate base. Another important decision of that year ruled that abuse of service through the improper conduct of the utility customer is proper justification for discontinuance of service by the utility company. It was so held in Southwestern Telegraph & Tele-

phone Co. *v.* Danaher, PUR1915D 571, involving a telephone subscriber who used profane language.

One other case decided in this year worthy of notice was Chicago, Burlington & Quincy Railroad Co. *v.* Wisconsin Railroad Commission, PUR1915C 309. Here the Supreme Court declared invalid a Wisconsin statute requiring the railroad company to offer more service in that state than was justified by the volume of business.

1916

In this year the New York Public Service Commission in *Re* Ashmead, PUR1916D 10 put an end to the troublesome "jitney bus" operation without regulatory authority, soon to be followed by other states. Another New York case decided in this year was People *v.* McCall, PUR1916D 91, in which the New York Supreme Court first held that the availability of an alternative utility service is an excuse for the failure or refusal of a utility to serve. Probably the most frequently recited decision of this year was the Supreme Court decision in Terminal Taxicab Co. *v.* Kutz, PUR1916D 972, which held taxicabs to be public utilities but first made the distinction between so-called "contract carriers" and those who hold themselves out to serve the public generally. Only those in the latter class, ruled the court, were subject to regulation as utilities.

Only one case during this year commands special notice. It was a decision of the Illinois Supreme Court upholding the right of that state to bar foreign corporations from engaging in public utility service (State Public Utilities Commission *v.* Romberg, PUR1917B 355). The following states now require utilities to be incorporated within the state before rendering public service: Arizona, California, Illinois, Indiana, Minnesota, New Hampshire, New York, Ohio, and Wisconsin.

1917

In this year the California Supreme Court in Associated Pipe Line Co. *v.* Railroad Commission, PUR1918B 633, ruled that pipe-line companies owning their own oil fields and transporting only their own oil, are not common carriers subject to being required to transport oil for others. A California statute attempting to impose regulation on such concerns was held invalid.

1918

The Indiana Supreme Court in the Peoples Mutual Telephone Case, PUR1918D 548, made an important qualification on the right of a utility to be protected from competition. It refused to grant an injunction against telephone toll connections creating competitive conditions.

1919

The Pennsylvania Public Service Commission handed down an important service decision in Bilusich *v.* United Natural Gas Co. PUR1919D 790. The commission held that a natural gas company cannot refuse to render service merely because it does not have a charter right to serve a borough in which an applicant is located, if in fact it has a distribution main available and has actually served the area in question. In other words, actual profession of service by a utility was held to be superior to other factors in determining a utility's obligation to serve.

1920

The right of court appeal and review of all regulatory orders by state commissions was assured by the Supreme Court in Ohio Valley Water Co. *v.* Ben Avon Borough, PUR1920E 814. This decision (Brandeis dissenting) held invalid a Pennsylvania statute which attempted to withhold from the courts power to examine the issue of reasonableness or confiscation of rates fixed by the state commission.

1921

In Newton *v.* Consolidated Gas Co. PUR1922B 752, the Federal courts knocked out the old New York gas stat-

ute which attempted to fix both rates and service standards. This case practically sounded the death knell for statutory rate making. Thereafter state legislatures generally left the details of regulation in the hands of the state regulatory commissions.

1922

IN this year the Supreme Court decided the important Galveston Electric Company Case, PUR1922D 159, in which Justice Brandeis laid down the rule that "past losses," that is to say, operating deficits incurred by a utility in building up its operations to a profitable stage, should not be permitted to be included as useful property in estimating a subsequent rate base. A less well-known but important decision of the Supreme Court in this year was Ortega Co. *v.* Triay, 260 US 103, in which it was held that rates fixed by contract between a utility and private parties are subject to general regulation by the state.

1923

THIS was a bumper crop year for important regulatory decisions by the Supreme Court. In the Wolff Packing Co. Case, PUR1923D 746, Chief Justice Taft annulled an attempt by the Kansas legislature to regulate clothing and food and other general business lines in a manner approaching utility regulation of rates. In the Bluefield Water Works & Improvement Company Case, PUR-1923D 11, the court held that the failure of the West Virginia commission to allow for increased value of utility property as of the date of inquiry of the original cost of such property had resulted in an unjustifiable rate reduction. In the Georgia Power Company Case, PUR-1923D 1, the "reproduction cost" method of rate base valuation was also upheld. The Georgia Case contained an important pronouncement against the disallowance of Federal corporate income taxes as operating expenses. Most important of these decisions by far was the Southwestern Bell Telephone Case appeal by the Missouri commission, PUR1923C 193, in which the intercorporate services at contract rates between Bell system companies was sustained by the court majority. This decision is recalled chiefly, however, for the celebrated concurring opinion by Justice Brandeis in which he outlined, exhaustively, various methods of rate valuation and developed his preference for so-called "prudent investment."

1924

IN Gallaher *v.* Southern New England Telephone Co. the Connecticut Supreme Court of Errors, PUR1924A 279, rendered an important but rather technical decision defining the area base rate theory for telephone companies. The area base rate principle is now generally used by gas and electric companies and has been endorsed by regulatory authorities.

1925

IN Southern Utilities Co. *v.* Palatka, PUR1925D 105, the Supreme Court held that the fact that a franchise rate contract between a city and utility might be changed by the state legislature does not destroy its binding effect between the parties when it is left undisturbed by legislative action.

1926

IN McCARDLE *v.* Indianapolis Water Co., decided in this year, PUR-1927A 15, the Supreme Court probably went further than in any other case in requiring that rate base valuation be predicated upon economic conditions existing at the time of the rate regulation rather than upon original investment. The court said that there was even an obligation on the part of a regulatory body to attempt to forecast future trends in prices and values.

In the New England Telephone Company Case, PUR1926E 186, the New Hampshire Public Service Commission made an interesting study of the so-called "value of service" standard as possibly applied to telephone rate making. This mischievous phrase had been used in Smyth *v.* Ames, but had never been seri-

ously attempted as a practical test of reasonableness of rates. The New Hampshire commission decided formally that it was not practical.

In Peoples Natural Gas Co. *v.* Public Service Commission, PUR1926D 187, the Supreme Court held that the New York commission might regulate the rates charged to local consumers in a New York community by a Pennsylvania pipe-line company transporting its supply over a state line.

1927

In Clark *v.* Poor, PUR1927D 346, the Supreme Court upheld state regulation of interstate motor carriers for purposes of certification and taxation. In Rhode Island Public Utilities Commission *v.* Attleboro Steam & Electric Co. PUR1927B 348, the court held that an order of a state commission fixing the rate for electricity transmitted by a company from that state to a company in another state which resells the current cannot be sustained, even though such interstate business is only a small part of the general business of the producing company.

1928

In Hardin-Wyandot Lighting Co. *v.* Public Utilities Commission, PUR1928D 560, the Ohio Supreme Court sounded the death knell of "going concern value" as part of a utility's rate base by holding that it was unnecessary for the commission to make any separate allowance for this item. In Ribnik *v.* McBride, 277 US 350, the Supreme Court killed an attempt by New Jersey to regulate the rates of employment agencies.

1929

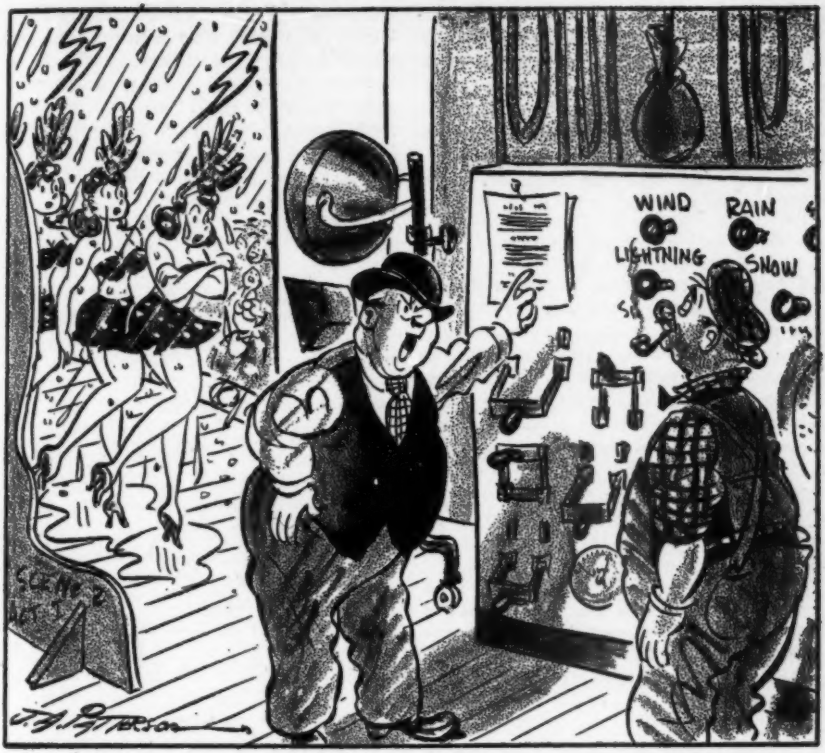
The most famous decision of this year was the O'Fallon Case, which blocked an attempt by the Interstate Commerce Commission to fix railroad rates based on spot valuation as of a given date. Present fair value, said the court, rather than past value at the present or an intermediate period, should be given recognition. In this year the Pennsylvania commission made the first attempt to regulate airplane carriers in *Re* Battlefield Airways, Inc. PUR1929A 476.

Also in this year the New Jersey Supreme Court, in Sixty-seven South Munn *v.* Public Utility Commissioners, PUR1929E 616, upheld the refusal of a utility to sell electric current to apartment house owners for purposes of "submetering" or resale at retail to tenants. The Missouri Supreme Court, in Rogers Iron Works *v.* Public Service Commission, PUR1929E 293, upheld the refusal of a water utility to serve a business competitor. In People ex rel. Potter *v.* Michigan Bell Telephone Co. PUR1929B 455, the Michigan Supreme Court said that the old legal doctrine that the corporate entity may not be disregarded except in cases of fraud should be liberalized in the case of relations between a separate utility and a holding company controlling it. The court said that regulation requires complete liberty of action in examining such intercorporate relations.

In this year the Supreme Court in the Standard Oil Case, PUR1929A 450, outlawed a Tennessee statute attempting to regulate gasoline filling stations as public utilities. Finally, in this year an attempt was made in Federal District Court to require the Massachusetts commission to fall in line with other state commissions in giving recognition to reproduction cost in fixing rates (Worcester Electric Light Co. *v.* Attwill, PUR1929B 1). The case was never appealed further, however, and Massachusetts, together with California, persisted for years in refusing to have anything to do with the reproduction cost theory. Today probably most of the commissions are in line with Massachusetts and California.

1930

The Wisconsin commission was the first to take notice of the increasing agitation against indiscriminate merchandising of appliances by operating utility companies. The Wisconsin commission in *Re* Accounting for Merchandise and Appliance Sales, PUR1930E 204, laid down the requirement that such



"PLEASE TRY TO FOLLOW THE SCORE, MR. MURPHY, PLEASE—NO IMPROVISING!"

activity should be strictly segregated from operating utility accounts. In United Railways & Electric Co. *v.* West, PUR1930A 225, the Supreme Court held that accrued depreciation, as well as the rate base itself, must reflect consideration of present fair value as well as original cost. The Supreme Court in Smith *v.* Illinois Bell Telephone Co. PUR1931A 1, took its first step back in the direction of permitting original cost rate base considerations to remain undisturbed. The principal issue, however, was the operating expense relation of the Illinois Bell Company and its system affiliate.

1931

IN *Re* Rates & Rate Structures Electricity in New York City, PUR1931C 337, the New York Public Service Commission made one of the most comprehensive analysis of electric rate theories presented in any regulatory opinion.

In the People *v.* Swena Case, PUR1931C 149, the Colorado Supreme Court ruled that the Colorado Public Utilities Commission had no authority to punish for contempt.

1932

THE Wisconsin commission, in *Re* Wisconsin Telephone Co. PUR1932D 173, made the first formal attempt to apply the old "value of service to consumers" standard in fixing rates. The case dragged along in the state courts several years and was finally overruled.

A more successful attempt, locally at least, was made the same year by the Maine Supreme Judicial Court in Gay *v.* Damariscotta-Newcastle Water Co. PUR1932E 300. In Stephenson *v.* Binford, PUR1933A 440, the Supreme Court upheld state regulation of both "contract" as well as common carriers by motor truck.

1933

THE first real break by the Supreme Court from its previous rigid position requiring recognition of present fair value of utility rate making came in Los Angeles Gas & Electric *v.* California Commission, PUR1933C 229. The court said that it did not sit as a board of review to pass on methods of regulatory bodies in the absence of evidence that rates finally fixed were actually confiscatory. This case foreshadowed the more sweeping decision in the Hope Natural Gas Case eleven years later.

The antimerchandising agitation reached its climax in this year when the Kansas Supreme Court declared unconstitutional a statute prohibiting utilities from selling appliances (Capital Gas & Electric Co. *v.* Boynton, PUR1933D 435). The U. S. Supreme Court refused to review. Only one other state, Oklahoma, had passed such legislation, although several had considered it. The more coöperative policies followed by utilities relating to independent appliance dealers stifled the agitation.

In Montana Public Service Commission *v.* Great Northern Utilities Co. PUR1933C 225, the Supreme Court upheld a Montana commission order prohibiting the charging of competitive rates established by a utility engaged in a rate war which, the commission found, were so low as to be "unreasonable" and likely to impair the ability of the utility to continue service.

1934

THE Supreme Court took another step in the direction of leaving regulatory rate-fixing methods in the hands of the regulatory commissions in Lindheimer *v.* Illinois Bell Telephone Co. 3 PUR(NS) 337. The court found that where the telephone company was charging rates sufficient to keep its property and reserves in good shape while paying 8 per cent dividend on common stock, the claim of confiscatory methods used by the commission in fixing such rates would not be sustained.

In Nebbia *v.* State of New York, 2 PUR(NS) 337, the Supreme Court began to liberalize its earlier doctrines restricting rate regulation to traditional public utility business. In this case a New York law fixing the price of milk was sustained.

1935

IN West *v.* Chesapeake & Potomac Telephone Co., 8 PUR(NS) 433, the Supreme Court in a split opinion probably paid its last respects to the earlier series of cases stemming from Smyth *v.* Ames, which places emphasis on present fair value in fixing utility rates. The majority of the court held in the Chesapeake Case that the Maryland commission could not take a short cut in fixing the telephone company's rate base through the use of commodity price indices in bringing up to date an original cost valuation. The decision did not, however, outlaw the use of indices in valuation work, but simply found fault with general commodity price indices being applied to such specialized property as utility plant.

In Corporation Commission *v.* Cary, 12 PUR(NS) 161, the so-called "Johnson Act," which requires state commission rate cases to be appealed in state rather than Federal courts, got its first judicial construction. The court found that the congressional limitation did not apply where a state law (in this case Oklahoma) did not provide exhaustive appellate relief in the state courts.

1936

THE Tennessee Valley Authority survived its first judicial attack in a collateral proceeding brought by a security holder of the Alabama Power Company. The Supreme Court in Ashwander

v. Tennessee Valley Authority, 297 US 288, did not, however, decide the merits of the constitutional issues raised except to say that the Federal government may lawfully sell power incidentally generated at Federal projects. In Northwestern Bell Telephone Co. *v.* Nebraska State Railway Commission, 13 PUR(NS) 467, the court upheld the use of a composite depreciation rate.

Also in 1936, the Supreme Court made an important distinction between accounting regulation and rate regulation in American Telephone & Telegraph Co. *v.* Federal Communications Commission, 16 PUR(NS) 225. It ruled that accounting regulations established by a regulatory body are entitled to a strong presumption of validity and upheld an FCC requirement that differences between original cost and investment in plant should be placed in an adjustment account for later disposition. Although it was not realized at the time, this decision paved the way for subsequent more sweeping orders of the Federal Power Commission in the field of accounting regulation.

In the Wisconsin State Rural Electrification Coördination Committee Case, 17 PUR(NS) 31, the Wisconsin commission required an electric utility in Wisconsin to furnish wholesale service to REA co-ops at reasonably low rates and under proper contract terms for such service. Other commissions have generally followed this precedent, making wholesale rates to co-ops generally quite attractive.

1937

In Alabama Power Co. *v.* McNinch, 21 PUR(NS) 225, the U. S. Court of Appeals for the District of Columbia upheld FPC issuance and regulation of Federal water power licenses under the Federal Power Act, including accounting requirements (at original cost).

1938

In Alabama Power Co. *v.* Ickes, 21 PUR(NS) 289, the court upheld the validity of Federal loans and grants (under the Public Works Administration program) in aid of public power plant construction by cities, states, and other public bodies. The decision was based upon the technical disqualification of the privately owned power company to bring suit. In Electric Bond & Share Co. *v.* Securities and Exchange Commission, 22 PUR(NS) 465, the court set up the SEC in the business of regulating holding companies under the Public Utility Holding Company Act by requiring such companies to register under the act. It left for later decision (scheduled for argument in the October term of 1945) the issue as to the validity of the so-called "death sentence" or § 11.

In Consolidated Edison Co. of New York *v.* National Labor Relations Board, 26 PUR(NS) 161, the Supreme Court held that a New York city gas and electric utility could be engaged in interstate commerce for purpose of labor regulation by a Federal board while at the same time obviously engaged in only intrastate commerce for purposes of utility regulation by the New York state commission.

1939

In Driscoll *v.* Edison Light & Power Co. 28 PUR(NS) 65, the Supreme Court upheld "temporary" or so-called "emergency" rate regulation under a Pennsylvania statute, where expeditious temporary rate orders are subject to subsequent adjustment after more deliberate regulatory inquiry. In Rochester Telephone Corp. *v.* Federal Communications Commission, 28 PUR(NS) 78, the court ruled that corporate control of a utility operating company need not depend on majority ownership of common stock. This important ruling set the stage for later decisions by the SEC and FPC holding that the relationship of parent and subsidiary could exist where stock control was very much less than majority ownership. In Tennessee Electric Power Co. *v.* Tennessee Valley Authority, 27 PUR(NS) 1, the court once more refused to pass on the constitutionality of a Federal agency being in the electric power business. By dismissing the suits of private utility companies as being improper

parties to raise such question, the court virtually closed the door on any constitutional test on the merits of this question.

1940

THE Supreme Court asserted the potential jurisdiction of the Federal government over virtually every river and stream in the United States in Federal Power Commission *v.* Appalachian Electric Co., 36 PUR(NS) 129, better known as the "New River Case." The issue raised here was whether the FPC under the licensing provisions of the Federal Power Act had authority to regulate a hydroelectric structure upon a river which was admittedly not navigable in fact. A majority of the court held that the test of navigability for purposes of establishing constitutional jurisdiction of the Federal government was not limited by navigability in fact, but by whether a stream, now non-navigable, might in the future be made navigable through physical improvements, or whether a structure upon a non-navigable tributary "affects the navigability" of a navigable stream.

Legal observers have pointed out that the implication of this decision, carried to its logical conclusion, would establish FPC jurisdiction over any stream or creek however small which crosses a state line, or connects with another body of water crossing a state line.

1941

THE Federal Power Commission, having been so successful in having its jurisdictional position regarding non-navigable streams upheld in the New River Case (noted above), began reaching out for more jurisdiction over electric power operations previously considered intrastate commerce subject to the exclusive control of state commissions. In this, the FPC was later equally successful in the Supreme Court, but it also succeeded in stirring up a rebellion among the state commissions which is still going on in the form of attempts by the National Association of Railroad and Utilities Commissioners to have the Federal Power Act amended to protect state commission jurisdiction from alleged Federal enroachment.

Probably the most important case of this kind began in 1941 with the FPC decision in *Re* Hartford Electric Light Co. 37 PUR(NS) 193. The commission here held that electricity generated by a company in one state delivered to another company for transmission across the state line for resale is transmitted and sold in interstate commerce, notwithstanding the fact that title to the energy was claimed to change at the point of delivery within the state.

1942

THE most important decision of this year is regarded by legal analysts as being the "precursor" of the famous Hope Case decided two years later. This was Federal Power Commission *v.* Natural Gas Pipeline Co. 42 PUR(NS) 129. Here the majority of the court decided that the Federal Constitution does not bind rate-making bodies to the service of any single formula or combination of formulas. This was interpreted by four members of the court (Black, Douglas, Murphy, and Frankfurter) as meaning that Smyth *v.* Ames had been overruled in effect. But the majority opinion by Chief Justice Stone simply upheld the FPC rate reduction order, in this case, on the negative grounds that the company had been unable to show that the commission's order produced an arbitrary result or that fair hearing had not been permitted. The issue of Original Cost *versus* Reproduction Cost was also clouded, in this case, by the fact that the FPC had actually accepted the company's estimate on reproduction cost for purposes of its order.

1943

IN this year the Supreme Court upheld the jurisdictional ambition of the FPC over any power moving across state lines, even though under circumstances previously regarded as intrastate commerce, subject to state commission jurisdiction. In Jersey Central Power & Light Co. *v.* Federal Power Commission, 48 PUR(NS) 129, the court upheld the as-

sertion of FPC jurisdiction over affairs of an electric company which operated physically entirely within the state of New Jersey, solely on the basis that it had a state line connection for the mutual interchange of power on a "slop-over" basis with another electric company operating on the New York state side of the line. The same year the Supreme Court refused to review the decision of the U. S. Circuit Court of Appeals in Hartford Electric Light Co. *v.* Federal Power Commission, 46 PUR(NS) 198, which the FPC began in 1941 (noted above under that year).

1944

By all odds the most important regulatory decision of this year, or probably of this decade, was the Hope Natural Gas decision, 51 PUR(NS) 193. In this case the FPC, in ordering the rate reduction, had refused point blank to consider any evidence on present fair value other than original cost. While the court still declined to overrule Smyth *v.* Ames, in so many words, the Hope Natural Gas decision virtually sterilized the earlier (1898) precedent, by turning over complete rate-making authority to the regulatory commissions, subject only to judicial review, where the "end result" could be affirmatively shown to injure the company's financial ability to continue service. This decision set the state and Federal commissions up as virtual masters of regulation.

Critics of the decision have called it a "Pontius Pilate" decision, in which the court abdicated judical review of any further utility rate case except under almost prohibitive conditions. Admirers of the decision, on the other hand, called it the "Magna Charta" of utility regulation, freeing the regulatory commissions from judicial interference which had plagued them since Smyth *v.* Ames. One important point of this decision was impliedly modifying, if not overruling, the "over-the-dam principle" the court had laid down back in 1922 in the Galveston Case (to the effect that neither past deficits nor past profits should have any bearing on the determination of a reasonable rate as of the date of regulatory inquiry).

A special opinion by Justice Jackson, in which he suggested that natural gas regulation might also depend on "end use" by the consumers, has given rise to important discussion now going on in regulatory circles on the subject of the relationship between utility regulation, as such, and the conservation of wasting natural resources.

In the Washington Gas Light Case, 52 PUR(NS) 257, the majority of the Supreme Court held that the Office of Price Administration, in the exercise of its wartime price control powers, had no authority to control rate case procedure or deliberations by public utility regulatory commissions.

1945

The Hope Natural Gas decision brought forth some strange fruit in the form of an FPC rate order which proceeded to assume jurisdiction over natural gas gathering and producing facilities, notwithstanding express prohibition in the Natural Gas Act. In the Canadian River Gas Co. Case, 58 PUR(NS) 65, four dissenting justices (Stone, Frankfurter, Reed, and Roberts) are shown to be apparently uneasy over this liberty of action assumed by the FPC, based on its regulatory independence under the Hope Case. A fifth member of the court swung the balance in favor of affirming the FPC but indicated his own willingness to reverse Hope Natural Gas if the other justices are disposed to do so, saying "This [Hope] case introduced into judical review of administrative action the philosophy that the end justifies the means. I had been taught to regard that as a questionable philosophy, so I dissented and still adhere to the dissent."

In another important natural gas case decided this year, the U. S. Circuit Court of Appeals in New Orleans (Federal Power Commission *v.* Louisiana; March 31, 1945) held that the FPC, under the Natural Gas Act, may consider the wasteful use at the consuming end of a pipe line in determining whether its construc-

tion ought to be authorized, but that such a consideration was not necessarily a "determinative factor." The court affirmed the authority of a gas-producing state to impose reasonable conservation measures, but not to the point of using conservation as a subterfuge for limiting export in interstate commerce altogether.

—F. X. W.

First Washington City Telephone Directory

THE first published telephone directory for Washington, D. C., bears the date of April 8, 1879, and was issued by the old National Telephone Exchange.

This was the original telephone organization serving the city of Washington, and was established in 1878 on the initiative of the late George C. Maynard. The Maynard records are in the possession of the Chesapeake & Potomac Telephone Company, which succeeded the old National Telephone Exchange.

It is noteworthy that the list contained only 126 subscribers with numbers. Telephone "No. 1" naturally went to the White House, listed alphabetically as "Executive Mansion." "No. 2" went to the Capitol, in the Senate corridor. But apparently the House of Representatives and the U. S. Supreme Court had to get along, at that time, without telephones of their own because "No. 3" was listed as a private subscriber—none other than the Associated Press headquarters. Two other government subscribers appeared to be the Department of Agriculture ("No. 105") and the Treasury ("No. 4"). The ranking but conservative Department of State waited until a little later before installing the newfangled contraption.

Several of the names appearing on this list are firms and individuals still living and active in Washington business and social life.

WPB Estimates Postwar Utility Expenditures

ON June 6th, Edward Falck, director of the WPB Office of War Utilities, forwarded to Chairman J. A. Krug of the War Production Board a statistical analysis prepared by H. F. Lowe, chief of the OWU Materials Control Branch. This interesting analysis by Mr. Lowe undertakes to show just what the expenditures might be for utility construction in the postwar period under two alternative circumstances: (1) under the materials restrictions prevailing as of the date Mr. Lowe's memorandum was compiled; (2) under the conditions which would prevail if such restrictions were removed by "open-ending" utility construction, so that utilities could proceed without limitation on any construction possible, subject only to preference ratings as to the essentiality of the proposed projects.

Inasmuch as the War Production Board has since "open-ended" utility constructions for gas, electric, telephone, telegraph, and water utilities by revisions of various so-called "U" orders, the estimated expenditures in Mr. Lowe's memorandum become of timely interest indeed.

In his letter of transmittal to Chairman Krug, Director Falck said: "You will note that the estimated utility construction expenditure for 1946 of $1,630,000,000 is roughly double the rate of expenditure for 1943 and 1944. The amount of this increased construction for 1946 attributable to the relaxed criteria for processing power project applications . . . is far greater than the amount of construction anticipated as a direct result of 'open-ending' utility construction."

THE summary of the Lowe memorandum, broken down according to

various classes of utilities (gas, electric, water, and wire) and according to various types of ownership, is contained in the following table.

Chart I accompanying this text shows in graphic form the relative amount of expenditures which is estimated will be made by various classes of utilities in the postwar period, with reference to the post-Victory-in-Japan-Day (VJ-Day) through 1946.

The memorandum also presented tentative quarterly estimates for post-Victory-in-Europe-Day (VE-Day) and analyzed controlled materials requirements in terms of steel, copper wire and cable, and aluminum—as indicated in Chart II accompanying this article (page 65).

OFFICE OF WAR UTILITIES
ANNUAL UTILITY CONSTRUCTION EXPENDITURES
1940-1946
(In Millions of Dollars)

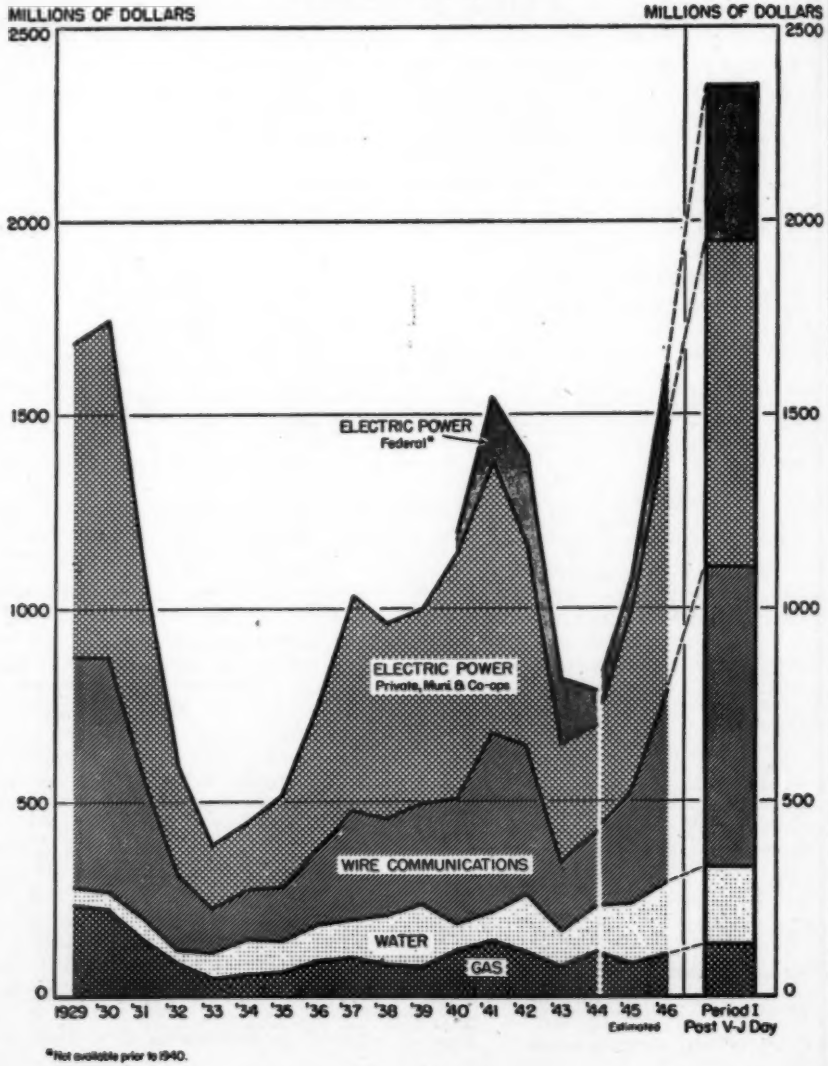
	Actual Expenditures				
Utility	*1940*	*1941*	*1942*	*1943*	*1944*
Electric					
Private and municipal					
Generation	207	238	228	157	97
Transmission and distribution	354	395	264	137	156
Rural coöperatives	79	65	30	12	20
Federal plants	50	172	233	169	90
Total electric	690	870	755	475	363
Gas	116	140	111	75	110
Water	69	75	150	90	120
Wire Communications					
Telephone	310	450	370	165	185
Telegraph	9	12	12	10	9
Total wire communications	319	462	382	175	194
Total utility	1,194	1,547	1,398	815	787

	Estimated Expenditures				
	Under Existing Restrictions		*With Construction Open-ended*		*Post VJ-Day Annual*
Utility	*1945*	*1946*	*1945*	*1946*	*Rate*
Electric					
Private and municipal					
Generation	143	175	146	214	250
Transmission and distribution	275	305	290	380	450
Rural coöperatives	32	60	34	105	145
Federal plants	75	75	82	145	400
Total electric	525	615	552	844	1,245
Gas	80	105	80	105	130
Water	148	155	155	185	200
Wire Communications					
Telephone	280	480	280	480	750
Telegraph	12	16	12	16	25
Total wire communications	292	496	292	496	775
Total utility	1,045	1,371	1,079	1,630	2,350

CHART I

PUBLIC UTILITY CONSTRUCTION EXPENDITURES

1929–1946 AND POST V-J DAY



*Not available prior to 1940.

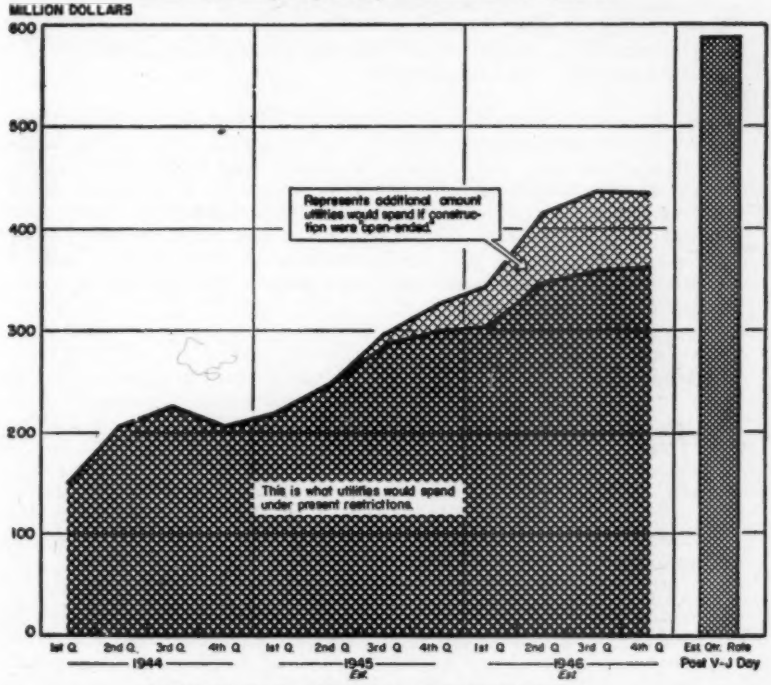
CHART II

PUBLIC UTILITY CONSTRUCTION EXPENDITURES

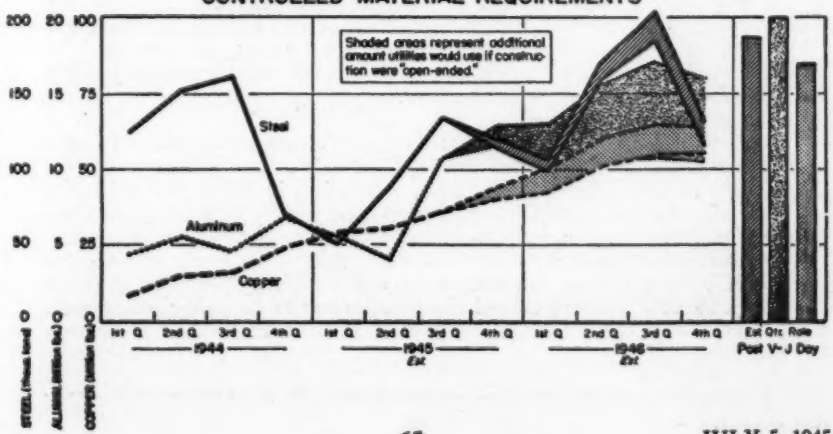
IN THE POST V-E DAY PERIOD

EXPENDITURES

INCLUDING ELECTRIC, GAS, WATER, TELEPHONE AND TELEGRAPH



CONTROLLED MATERIAL REQUIREMENTS



Famous Firsts in Regulation

FIRST HISTORIC RATE COMPLAINT: *According to the classical Latin author Tacitus, the Roman Emperor Tiberius (probably about 25 AD) acted on complaints against one Percennius, who operated a chariot-carrier system along the Appian Way, in and out of Rome. He was charged with levying extortionate rates against patrons shipping goods via his service. Verdict: guilty. Sentence: Death by hanging.*

FIRST HOLDING COMPANY: *Legend credits the first use of this corporate device to the political necessities of Numa Pompilus, the Sabine king of Rome (715-672 BC). He grouped the various land holdings of the crown under an incorporated diety known as Terminus (god of landmarks). By the same token, this king is said to have discovered the advantage of the limited liability corporation itself. For instance, if citizen property holders had a complaint against state land encroachment, they couldn't bother the king about it. They had to take the matter up—through appropriate ecclesiastical channels—with Terminus.*

FIRST BRITISH RATE REGULATION: *We first read of formal rate regulation in England with respect to the Bread and Beer Assizes during the reign of Charles I. It was the duty of this tribunal to meet in various centers throughout the kingdom to fix a price to be charged for bread and beer. Professor Walter H. Hamilton in a note in 39* YALE LAW JOURNAL *1089 (1930) says that "in Lord Hale's time (1609-1676) all activities comprehended under what we call business was public and all of it subject to price control." The list regulated by English Parliament includes bakers, brewers, cab drivers, ferrymen, innkeepers, millers, tailors, victualers, and wharfingers.*

FIRST AMERICAN RATE REGULATION: *Although in 33* HARVARD LAW REVIEW *838 (1920) there is mention of statutes in eighteen American colonies fixing prices of numerous marketable commodities, formal rate regulation in the United States came later. In 1820 Congress conferred upon the city of Washington power "to regulate the rates of wharfage. . . . and the sweeping of chimneys," and in 1848 "to make all necessary regulations respecting the rates of hauling by carriers, wagoners, cartmen, etc." In 1870, the Illinois Constitution was amended to authorize the statutory fixing rates for railroads and grain elevators.*

FIRST COMMISSION REGULATION: *The first American state commission having particular jurisdiction over utilities was probably the old Massachusetts Gas and Electric Commission, established in 1885, but it originally had only vague authority to fix rates which could only be exercised upon petition. The commission devoted itself principally to regulating securities. The Interstate Commerce Commission was established by act of Congress in 1887, but it did not originally have any rate-fixing power at all. First full-powered regulatory commissions authorized to fix public utility rates generally were set up in the same year, 1907, in two states, Wisconsin and New York.*

The March of Events

States Maintain Right to Regulate

THE Interstate Oil Compact Commission at its closing session at Oklahoma City last month adopted a resolution asserting that it is the "exclusive function of the sovereign states" to regulate the production and gathering of natural gas.

The producing states were called on "to adopt an alert and aggressive policy looking toward the enactment and enforcement of legislation to bring about a proper development of natural gas through reasonable and rigid enforcement of sound conservation practices."

The resolution stated that such a policy would be the "best insurance against intervention on the part of the Federal government in matters of production and gathering."

Charles V. Shannon, general counsel for the Federal Power Commission, in an address before the meeting, denied that the Federal government was encroaching upon the authority of the states. (Mr. Shannon has since resigned.)

"Not only is the FPC's rate-making authority limited to the transportation and sale of natural gas in interstate commerce," Mr. Shannon said, "but Congress specifically provided in the Natural Gas Act that the FPC shall not have jurisdiction over 'the production and gathering of natural gas.'"

Richard B. McEntire of Topeka, chairman of the Kansas Corporation Commission, declared the FPC's action in establishing a rate system based on the cost of production, plus a profit, was "economically unsound" and was "an opening wedge for general control of the whole industry."

First comes the matter of general regulation, Mr. McEntire said, and "in the entire nation there are only three agencies which are specifically charged by law with the duty of conserving natural gas resources and, at the same time, are legally responsible for regulating the natural gas industry as a public utility and thereby protecting the interests of the consuming public." These agencies, he said, are the Kansas Corporation Commission, the Oklahoma Corporation Commission, and the Texas Railroad Commission.

"The proper discharge of public utility regulatory functions makes it imperative to see that the utility company rendering service is not permitted to unjustly enrich itself at the expense of the members of the public," Mr. McEntire continued. "This means that the cost of service must be held down to an absolute minimum consistent with allowing the utility a sufficient income to exist and provide a modest return on its capital investment."

Carl I. Wheat, Washington attorney for the Independent Natural Gas Association, told the Oil Compact Commission that the FPC is opposed to setting "field prices" for natural gas. This statement was made in response to gossip that the FPC or some other Federal agency was on the eve of establishing prices at the well-head based on BTU content, similar to the present posted price system for crude oil.

Utility Angle in Press Case

THE recent 5-to-3 decision of the U. S. Supreme Court upholding the government's antitrust suit against the Associated Press is of interest to utilities and to those concerned with utility regulation, principally because of the special concurring opinion of Justice Frankfurter. He went along with the majority, not because he thought the Associated Press activities had resulted in particularly unlawful restraints of trade (the reason given by Justice Black in the majority opinion), but because the business of disseminating news is of itself so important as to warrant special regulation and control by the government.

Justice Douglas referred to Justice Frankfurter's concept as "the public utility theory" of the case.

Justice Frankfurter expressed the opinion that because of the nature of its business—disseminating news—the coöperative activity of the Associated Press was subject to much stricter application of antitrust statutes than other lines of coöperative activities not so immediately affected with public interest. One implication of Justice Frankfurter's opinion was that coöperatives engaged in utility operations, such as REA co-ops, might also be placed in the category of coöperatives affected with a public interest and thereby subject to rigid application of antitrust statutes.

FPC Sets Date

THE Federal Power Commission on June 16th announced its order granting oral argument before the commission *en banc* concerning the lawfulness of proposed increased rates for natural gas subject to its jurisdiction

sold by United Fuel Gas Company, Warfield Natural Gas Company, Cincinnati Gas Transportation Company, and Huntington Development & Gas Company to each other, to other subsidiaries of the Columbia Gas & Electric Corporation, and to nonaffiliated companies. The argument will be heard on September 12th in the commission's office at Washington, D. C. All four of the companies involved in the proceedings are Columbia subsidiaries and have their principal offices in Charleston, West Virginia.

The commission's action announced last month followed consideration of applications requesting oral argument filed by the four respondent companies, the state of West Virginia, the Board of Public Works of West Virginia, the public service commission of West Virginia, and limited participants Wesley H. O'Dell et al. producers or owners of gas in place.

NLRB Chairman Named

PAUL M. HERZOG, former member of the New York State Labor Relations Board, was appointed by President Truman last month to be chairman of the National Labor Relations Board. He succeeded H. A. Mills, who resigned for reasons of health after having served nearly five years.

At the same time the President appointed W. Stuart Symington, president of the Emerson Electric Company of St. Louis, to be chairman of the Surplus Property Board, succeeding Guy M. Gillette of Iowa, who resigned.

Mr. Herzog was born in New York thirty-nine years ago. He was graduated from Harvard College in 1927 and from the Columbia Law School in 1936. He was an instructor in government and economics at the University of Wisconsin and at Harvard, 1928-31.

He was assistant to the secretary of the original National Labor Board 1933-35, and served on the New York Labor Board, 1937-44, resigning to enter the Navy. He will be released to take his new post.

Asks Aid to Avoid Rationing

THE necessity of rationing travel may be averted if the people maintain their cooperation and follow a 6-point voluntary program outlined by the Office of Defense Transportation, Colonel J. Monroe Johnson, its director, indicated recently.

It was hinted, however, that more restraints might be imposed as the heavy movement of troops being redeployed against the Japanese gained volume. The ban on conventions may be extended to local group meetings. Heavy users of transportation facilities, such as entertainment and sports groups and large commercial enterprises, may find their traveling trimmed to the bone.

Colonel Johnson's statement followed a warning by President Truman that he would not hesitate to recommend rationing or other control of travel facilities if the people failed to heed the repeated requests by the government to eliminate needless travel.

Colonel Johnson acknowledged that "all sorts" of rationing plans had been under consideration for the last four years but that all had turned out to be "expensive, cumbersome, and of doubtful value."

Grants Limited Certificate

AS a war emergency measure to supply additional gas to the Appalachian area during the coming winter, the Federal Power Commission recently issued a limited certificate of public convenience and necessity to Tennessee Gas & Transmission Company, Houston, Texas, to operate under lease from the Defense Plant Corporation, four new compressor stations totaling 33,600 horsepower to be built by DPC; and to construct and operate additional cooling equipment, scrubbers, and compressors at five existing stations. The new stations will be built in Washington county, Mississippi; Hardeman county, Tennessee; Robertson county, Tennessee; and Montgomery county, Kentucky.

Vice Chairman Leland Olds dissented from the majority on the ground that the evidence of record did not show an urgent wartime necessity for action on the Tennessee Company's application.

The construction of the additional facilities covered by the application was initiated by the War Production Board, the majority opinion said.

Arkansas

FPC Position Sustained

JUSTICE David A. Pine of the United States District Court for the District of Columbia, in a memorandum opinion dated June 6th, granted the motion of the Federal Power Commission to dismiss the complaint of the Arkansas Power & Light Company and the cross-claim of the state department of public utilities, both seeking an injunction to restrain the commission from further action in a proceeding against the company, and requesting a declaratory judgment that exclusive jurisdiction over the company's accounts is vested in the Arkansas Department of Public Utilities.

Judge Pine pointed out that the administrative remedies under the Federal Power Act

have not been exhausted, and "no one is entitled to judicial relief for a supposed or threatened injury until the prescribed administrative remedy has been exhausted."

AP&L's president, C. Hamilton Moses, subsequently stated that the company would appeal the district court's decision granting FPC's motion for dismissal and would seek an order restraining the Federal agency from holding a hearing set for June 25th on reclassification of AP&L accounts. The utility had been asked to show cause at the June 25th hearing why it should not reclassify its accounts under the "original cost" system, which conflicts with the state commission's orders governing the reclassification.

Colorado

Court Rejects Fund Plea

THE tenth Federal Circuit Court of Appeals, sitting in Denver on June 12th, turned down a suggestion that it make an immediate finding that approximately $6,000,000 impounded with the court in the Denver natural gas rate case belongs to the ultimate consumers of gas.

The circuit court also declined to take action on a request that it immediately name a special master to take charge of the impounded money as a first step toward refunding it to consumers.

Speaking from the bench, Presiding Judge Sam G. Bratton of New Mexico said the court believed it should wait until a new schedule of wholesale gas rates has been filed with and approved by the Federal Power Commission before entering any order relating to the disposition of the impounded funds, or appointment of a special master.

Utility executives in Denver were said to anticipate the new wholesale rates to be charged by the Colorado Interstate Gas Company and the Canadian River Gas Company, principal defendants in the rates case, would be filed in Washington before the end of June.

The plea for immediate action was made by William A. Bryans, III, attorney for the Public Service Company of Colorado and other distributing companies, who told the court some income tax difficulties might be avoided if the impounded money were refunded to consumers in 1945.

He also pointed out considerable time may be consumed in bookkeeping work to determine the amounts of refunds for individual consumers and said consumers are anxious to receive their money as soon as possible.

Illinois

Trustees' Plan Disapproved

CLEARING the way in the direction of the public ownership plan for Chicago's transit facilities, United States District Judge Michael L. Igoe last month formally eliminated a plan of the bankruptcy trustees of the surface and elevated lines for reorganization and unification.

Judge Igoe acted under the recent report of the state commerce commission, which disapproved this plan and upheld the public ownership proposal of the city administration.

An advisory report from the Securities and Exchange Commission on the public proposition was awaited. It is scheduled for delivery August 13th and for a court hearing August 15th.

Indiana

FPC Authorizes Pipe Lines

THE Federal Power Commission has issued certificates of public convenience and necessity authorizing: (1) Panhandle Eastern Pipe Line Company to construct and operate a short pipe line beginning at a point on Panhandle Eastern's "Greenfield lateral" in Hancock county, Indiana, and extending to Fortville, Indiana, and (2) Eastern Indiana Gas Company to construct and operate a line extending from Panhandle's line at Fortville to Ingalls, Indiana. Fortville, Ingalls, and McCordsville were formerly supplied with natural gas from local wells which have become depleted. Ingalls is without a gas supply and the other two towns have inadequate supplies.

The state public service commission and the public counselor of Indiana participated in hearings on this matter held in Indianapolis in December, 1944, and in Washington, D. C., in February, 1945. The Indiana commission took the position that a new line to these communities is required to provide adequate service.

The FPC order specified that the facilities to be constructed by Panhandle shall not be

used to transport and sell gas to new customers except upon specific authorization of the commission.

The Power Commission's order also provides that construction of the facilities shall be completed on or before September 30, 1945.

Panhandle Eastern has entered into a contract for the sale of Eastern Indiana's gas requirements in all three towns; and has agreed to supply the Greenfield company with enough gas to serve its customers in and near Fortville.

Kentucky

City Earns Surplus

THE municipally owned electric plant of Murray has an earned surplus of $75,668.80, accumulated in three years of operation with TVA power, it was announced last month by Robert S. Jones, chairman of the city's electric plant board.

Jones made the figures public as the city made plans to celebrate its third anniversary of municipal ownership June 11th.

Murray was the first city in Kentucky to contract for TVA power with its own electric plant.

Jones said the electric plant board had paid off $60,000 of its $200,000 bonded indebtedness and expected to pay off an additional $30,000 in November.

Maryland

Transit Firm Elects President

FRED A. NOLAN, president and general manager of the Los Angeles Transit Lines and formerly general manager of the Chicago Surface Lines and of the Detroit Street Railway, last month was elected president of the Baltimore Transit Company to succeed Bancroft Hill, who was to retire on July 1st, the transit company's board of directors announced.

On July 1st the voting trust agreement under which the Baltimore Transit Company has been operated by a group of voting trustees since 1935 would expire and control of the utility would pass to the stockholders.

Mr. Nolan said no changes were contemplated in the personnel of the Baltimore Company nor in its managerial staff.

The new head of the Baltimore Transit Company is fifty years old. His work as a street railway and bus man began in Detroit, where he became a passenger accountant in 1922. He later became general auditor and then general manager, holding the latter position for ten years with the Detroit Street Railway.

On May 1, 1943, he was made general manager of the Chicago Surface Lines; became vice president and general manager of the American City Lines on February 1, 1945; and went to Los Angeles as president and general manager on May 3, 1945.

In a case involving the Baltimore Transit Company, Judge Joseph Sherbow in circuit court on June 8th ruled the transit firm was entitled to deduct $2,000,000 in lieu of actual fixed charges and also deferred maintenance reserves in computing the tax. The opinion largely supported claims of the transit company in its controversy with the city of Baltimore over the amount of net income tax due the city for the years 1942 and 1943.

Although the opinion decided major issues in the case, attorneys pointed out that the court still had to decide what amounts may be deducted as deferred maintenance and also to pass on other important questions involved.

It was indicated that the case would ultimately reach the court of appeals for final adjudication.

Michigan

Expects Extension Approval

THE Detroit Edison Company has requested and was said to be expecting to receive approval from the state public service commission of a new ruling which would permit the company to build farm-line extensions at its own expense with the customer paying only a nominal minimum monthly bill instead of contributing part of the cost of the line. Under the new ruling there would be no construction charge for any farm-line extension of reasonable length. The farmer will be asked to pay only a minimum net amount of $2.25 a month for three years after the service is connected. For this amount the company will render all its usual electric service, including the use of 54 kilowatt hours per month. Electricity will be sold to these new farm customers at the same rate which is paid by all other Edison residence and farm customers.

The commission was said to have indicated that the petition would be granted. Practically all farm-line extensions by Detroit Edison will be on the new basis as soon as the request has been formally approved by the commission.

Nebraska

Asks Hike in REA Power Offer

THE Sidney public power board was recently expected to make an "ultimatum" offer to sell to the Rural Electrification Administration for $150,000, the outlying power lines now held by the Sidney public utilities and serving cities of Dalton, Gurley, and Sunol.

Board Chairman R. E. Roche said "we are not interested in the ownership and management of these properties if REA wants to take them over." However, the board's position is not one of emergency or embarrassment, he said, because "the latest audit indicates we will show a net profit of around $17,000 from the operation of these properties."

The properties include lines serving the towns of Dalton, Gurley, and Sunol, and rural lines, but do not include the substation just west of Sidney nor lines to the Sioux ordnance depot.

Roche said the $150,000 figure was arrived at in a conference in Omaha early last month with Robert Fulton, the board's engineer; and Don Pettis of Omaha, representing the bondholders. REA has unofficially offered to pay $105,000 for the properties but the offer was verbal and no action was taken, the former Sidney mayor added.

New Jersey

Court Rules against Railroads

STATE Supreme Court Justice A. Dayton Oliphant last month ruled that payments made to the state by five railroads on delinquent railroad taxes for the years 1932 through 1940 must be applied first to interest and then to principal.

He also held in one of his last opinions as a circuit court judge that all the interest owed by the roads from 1932 on must be computed at the rate of 12 per cent per month and that none of it could be figured on the 3 per cent per month rate set in the 1941-1942 railroad compromise acts.

Justice Oliphant's ruling was made on the basis of hearings conducted before him in circuit court while he still was a judge in the lower tribunal. He was named to the state supreme court last May.

The decision was the result of circuit court suits filed by Attorney General Walter D. Van Riper in an effort to collect $12,009,790 in tax interest which the state claimed was due from the Erie Railroad, Lehigh Valley Railroad, New York Central Railroad, Delaware, Lackawanna & Western Railroad, and the Reading Company. The state disputed the railroads' contention the money could be applied to either principal or interest as they directed.

Stating the principal question in the suit was whether partial payments made by the railroads on account of delinquent principal taxes between December 19, 1932, and July 22, 1941, should be credited against such principal taxes to the exclusion of the interest due thereon, Justice Oliphant declared that partial payments could not be made on principal while interest thereon was owing.

New York

Governor Picks Antibias Board

GOVERNOR Dewey last month appointed the five members of the state commission against discrimination, which will enforce the new law making it a crime after July 1st to discriminate in employment because of race, color, creed, or national origin.

Henry C. Turner of New York city, lawyer and former president of the New York Board of Education, was named as chairman of the commission.

Other board members are: Elmer A. Carter of New York city, a director of the National Association for the Advancement of Colored People; Edward W. Edwards of Albany, a labor leader; Julian J. Reiss of Lake Placid, director of the International Tailoring Company of New York city; Mrs. Leopold K. Simon of New York city, an attorney and a member of the state workmen's compensation board.

Each of the commissioners will receive $10,000 a year.

Commission offices will be established in Albany and New York city and wherever else they are necessary.

Mr. Turner said he and his colleagues were convinced that "the law can be made to work."

While the law empowers the commission to take punitive action against employers who refuse to abide by its decisions in matters involving discrimination, both Governor Dewey and Mr. Turner emphasized that the primary function of the commission would be education in employer-employee relations and that the statute itself provided exhaustive means for conference and conciliation before recourse to the punitive provisions.

Orders for Gas Heaters Delayed

BROOKLYN UNION GAS COMPANY reported last month that so many customers have placed orders for gas-heating equipment since the War Production Board lifted restrictions that it had been forced to delay accepting new bookings until shipments from manufacturers enable the company to reduce its present backlog of unfilled orders.

James J. Deely, new business manager, said that manufacturers had promised delivery within thirty days of enough heating units to fill current orders, but even the most optimistic estimates indicated that many of those seeking to convert to gas heat would be unable to do so in time for the next heating season.

Nearly 5,000 persons, it was said, had inquired about gas heat since April 28th, the date on which WPB rescinded the rule which prevented the company from serving new heating customers without specific WPB approval.

Gives Pay Rise

WAGE increases totaling $4,000,000, affecting 31,000 employees of New York city's unified transit system, were announced last month by the board of transportation. The increases, forecast in Mayor LaGuardia's executive budget message of April 1st, would become effective July 1st.

About 27,000 employees paid on an hourly basis will receive an additional 5 cents an hour. About 4,000 employees paid on an annual basis will obtain increases of $120 a year.

Submetering to Supreme Court

THE court fight against taxing submetering building owners as utility owners is about to go for final determination to the United States Supreme Court, Arthur C. Bang, chairman of the public utilities committee of the Real Estate Board of New York, Inc., said recently. The committee instigated the campaign some five years ago and has been carrying it forward in the state courts.

The committee's latest test cases, one involving property owned by Madison Avenue Offices, Inc., and the other owned by the Estate of H. Mabel MacDonald, tried jointly as one legal action, were, according to Mr. Bang's announcement, virtually passed on to the United States Supreme Court by the New York State Court of Appeals in the latest judicial determination in this war against the legislative classification of building owners as utilities.

The matter is expected to get before the Supreme Court during the fall term, with the possibility of a decision late this year.

Ohio

Must Pay Taxes

THE state supreme court in a 5-to-2 decision handed down at Columbus on June 6th held that Cleveland's municipally owned transit system was subject to taxation. The decision, it was reported, possibly opens the door for the taxation of all municipally owned utilities in the state in the opinion of scores of attorney members of the state legislature.

Transit officials estimated the system's annual tax bill would be in the neighborhood of $250,000, and a reserve of half a million dollars in payment of 1943 and 1944 back taxes had been set aside pending the decision.

The action against the transit system was brought by the county auditor and the Cleveland board of education, whose share of taxes under the court ruling will be approximately $56,000 a year. All suburbs of the city will receive a proportionate share.

Robert J. Shoup, assistant general counsel for the CTS, announced that an application for a hearing would be filed immediately. This was believed to be the only recourse the system has.

The court's decision reversed a ruling by the state board of tax appeals which had exempted the system from both real and personal taxes. The case was argued in the supreme court January 30th.

A dissenting opinion was written by Judges Charles B. Zimmerman and Roy H. Williams. The majority opinion, written by Judge Charles Bell, was concurred in by Chief Justice Carl V. Weygandt and Judges Edward C. Turner, Edward S. Matthias, and William L. Hart.

The majority held that the city of Cleveland, which acquired the transit system from the Cleveland Railway Company for $14,300,000, was engaged in a "private enterprise for profit" and therefore the property could not come within the constitutional exemption of property used for public purpose.

Pennsylvania

ODT Ordered to Seize Transit Line

PRESIDENT Truman on June 15th directed the Office of Defense Transportation to seize and operate the Scranton Transit Company, Scranton, as a result of labor disturbances there. The President issued an executive order proclaiming that the disturbances were threatening to impede the war program. Later ODT announced it would take possession and control of the transit company property at 12:01 A. M. June 16th. However, a few minutes before the time set for seizure the workers voted to end the strike.

The agency named T. H. Nicholl, executive assistant of ODT's highway transport department, as Federal manager in charge of operating the system.

Economic Stabilizer Davis said the line's operation was halted as a result of a dispute between division 168, Amalgamated Association of Street, Electric Railway, and Motor Coach Employees of America (AFL), and the company.

He added that 400 union employees of the company had been on strike since May 20, 1945, over union demands for changes in working conditions and overtime pay and a 20-cents-per-hour general wage increase.

Previously, Dr. George Taylor, chairman of the War Labor Board, reported to Davis that a show-cause meeting on June 4th before the NWLB, the international representative of the union—the Amalgamated Association of Street, Electric Railway, and Motor Coach Employees of America (AFL)—declared that the strike was unauthorized by the international union.

City Refused Aid

IF the city of Pittsburgh wants to continue the fight against Equitable Gas Company's proposed rate increase, it will have to dig into its own pocket. Governor Edward Martin recently refused to intervene in the state public utility commission hearing after he had been asked to provide funds for an audit in the case.

City Solicitor Anne X. Alpern made the request to the governor when the state commission announced early last month that it would not offer any evidence against the gas firm. She asked for a state appropriation to combat Equitable testimony.

In his letter, Governor Martin pointed out that the state commission was conducting the gas rate investigation. The commission, he said, had sufficient funds to carry on its inquiry.

On June 13th Miss Alpern told the city council that her efforts to block a raise in gas rates had been impaired by the lack of sufficient help from the commission. The commission, she said, was not adequately staffed to protect public interest.

South Carolina

To Serve in Rate Case

CLINT T. GRAYDON, Columbia attorney, agreed last month to represent the city in the rate reduction request to be presented before the state public service commission. Mr. Graydon met with Mayor Fred D. Marshall and members of the city council on June 6th.

The request will include an appeal from the city for a reduction of rates of the South Carolina Electric & Gas Company within the city.

According to the mayor, the council and Mr. Graydon reached a "satisfactory agreement." He added that the attorney would begin work on the matter immediately.

A previous request made by Mayor Marshall to the General Gas & Electric Company of New York for a "voluntary" rate reduction was refused.

Tennessee

Company Gets Charter

TENNESSEE NATURAL GAS LINES, formerly a Delaware firm, took out a state charter of incorporation at the secretary of state's office last month. It listed headquarters of the firm as the Hamilton National Bank building in Chattanooga.

As a Delaware firm the company was authorized to engage in business in Tennessee December 6, 1943. Its old charter authorized issuance of 50,000 shares of stock at no par value. The new charter allows 500,000 shares of common stock at a par value of $10 per share and 300,000 shares of preferred stock at $100 par value per share.

Incorporators were Wade V. Thompson, Dawson B. Harris, Frank M. Cantrell, H. S. Walters, Phil B. Whitaker, Malcolm C. Hill, and George M. Smith.

Texas

Natural Gas Study Group

LIEUTENANT Governor John Lee Smith last month named a committee of five senate members authorized in a resolution by T. C. Chadick of Quitman to investigate natural gas resources of the state.

The committee will be composed of Chadick, chairman; Howard Carney of Atlanta, Wardlow Lane of Center, James Taylor of Kerens, and R. A. Weinert of Seguin.

Each of the five members of the committee has gas- or oil-producing fields in the district which he represents.

The committee under the provisions of the resolution is authorized to make a thorough investigation of the state's potential gas supply, the amount of withdrawals, the purpose of withdrawals, and the purpose for which it is being used.

Chadick said the committee should be in possession of all necessary facts regulating the industry in view of the fact that there is a "proposal now receiving consideration for federalization of the gas industry." The committee should be in a position to present facts to the state legislature which would be able to act to protect state rights, Chadick said.

The state industry advisory committee, composed of thirteen advisers appointed by Governor Stevenson, has recommended to Governor Stevenson a declaration of policy regarding the regulation of oil and gas.

Federal agencies should limit their jurisdiction to interstate movement and not attempt to regulate the end use of fuel, the committee advised.

State regulation should prevent physical waste, provide allocations, fix proper oil-gas ratios, limit production to market demand, and require recycling and repressuring of reservoirs where warranted. Before oil and gas enter interstate commerce, the proposals read, the state should have exclusive jurisdiction over production, processing, gathering, compressing, and selling of oil and gas.

Washington

PUD Acquires Utility Holdings

AS a result of a decree signed in Ephrata by Judge E. W. Schwellenbach on June 13th, Washington Water Power Company holdings in Grant county were turned over to Public Utility District No. 2 for the sum of $546,984.

Officials of the power company waived their final appeal to the state supreme court for a new condemnation suit trial and accepted the PUD check in the presence of attorneys and officials of the PUD. The sum was fixed by a jury December 8th, following condemnation suit brought by the utility district and heard in superior court in Ephrata.

Archie Zickler, chairman of the PUD board, said that the entire Washington Water Power Company personnel was to remain with the power district, under direction of G. A. Smothers, manager. Everett Gibbons, who has been manager at the Ephrata office, becomes general superintendent.

"We look forward to a rapid growth in the system as soon as Columbia basin development is carried forward by the U. S. Bureau of Reclamation, but for the present rates and conditions will not be changed."

Grant county's move, it was said, leaves only the property in northern Chelan county still under Washington Water Power ownership in north-central Washington. Okanogan and Douglas counties have previously taken over their systems.

Wisconsin

Assembly Kills Natural Gas

ALL hope of legislative approval of any natural gas bills in the 1945 session died in the state assembly last month.

Members on June 12th refused, 47 to 43, to reconsider the action by which they had previously killed a measure giving the state public service commission broader power to admit natural gas into the state. The vote brought little change in the lineup which has defeated all attempts to ease the introduction of natural gas in Wisconsin.

The rejected bill would have removed the power now held by any community on a proposed pipe line to veto efforts of other cities or villages to obtain natural gas. A companion bill repealing the present tax on natural gas was in the joint finance committee, where it would die with the legislative recess.

Supporters of natural gas asked reconsideration in order to introduce an amendment referring the controversial issue to the people in the 1946 general election. Their plea was rejected by the 47-to-43 vote, which prevented any additional action on the legislation.

The Latest Utility Rulings

Coöperation in Accounting Regulation Discussed by Power Commission

THE Federal Power Commission, in denying a rehearing of its order in *Re* Montana Power Co. (1945) 57 PUR(NS) 193, refused to modify its adherence to cost instead of value in order to accord with the views of the Montana commission expressed in *Re* Montana Power Co. (1944) 56 PUR(NS) 193.

The commission stated that it was aware of the advantages which can flow from the effective coöperation of regulatory agencies. Ours is a dual system of government, and Congress has recognized this fact in the provisions of the Federal Power Act. The commission must, however, accept the further fact that Congress, in conferring upon the commission jurisdiction over the accounts of licensees and public utilities, provided for their uniform treatment. The commission added:

> While Congress provided that "public utilities" should not thereby be relieved from compliance with lawful state accounting requirements, it rejected an amendment which would have created substantially the situation for which the company now contends.

The commission reviewed the history and development of the case in order to show its efforts to coöperate with the Montana commission and to indicate that due consideration had been given to the views and conclusions of the state commission regarding the problems involved and the evidence presented. The commission continued:

> While it may be regretted it was impossible for the two commissions to reach identical determinations in the matters before them, we do not deem this a sufficient reason for either to question the competence or to impugn the motives of the other. We must, however, recognize our responsibility and obligation under the statute to arrive at our own independent conclusions in accordance with our own best judgment concerning the facts of record.

Re Montana Power Co. (Opinion No. 120-A, Docket No. IT-5825).

Stockholder of Holding Company Entitled To Review of Commission Order

THE United States Supreme Court, in reviewing two judgments of circuit courts of appeals, upheld the right of a stockholder of a holding company to seek a review of an order of the Securities and Exchange Commission. In each case the stockholder was held to be a "party aggrieved" within the meaning of § 24(a) of the Holding Company Act.

The court reversed the action of the circuit court of appeals, first circuit, in (1944) 55 PUR(NS) 239, 143 F(2d) 250, dismissing a petition by American Power & Light Company to review an order of the commission directed against its wholly owned subsidiary, Florida Power & Light Company. The order required the subsidiary to make certain accounting entries which would result in taking out of surplus moneys which would otherwise be available to pay dividends to the sole stockholder.

The commission did not question that American, as sole stockholder, had a substantial economic interest affected by the order; nor did it maintain that the term "person aggrieved" was not broad enough to include one whose economic

interest is affected by such an order. It insisted, however, that American's application for review was in the nature of a derivative action, commonly designated a stockholder's suit, to redress a wrong to his corporation. The commission, therefore, urged that, as Florida itself had sought a review of the order, it must be presumed that Florida would endeavor to protect the interest of its sole stockholder. But the court declared:

> The difficulty with this contention is that the action of the commission in ordering the transfer of an item from surplus account to another account where the item will not be available for the payment of dividends does not deprive the corporation of any asset or adversely affect the conduct of its business in the manner it affects the petitioner, whereas the order has a direct adverse affect upon American as a stockholder entitled to dividends.

The court upheld the action of the circuit court of appeals, second circuit, denying a motion of the commission to dismiss a petition by Samuel Okin, a holding company stockholder, to review an order of the commission approving refinancing of an intercompany loan, in (1944) 56 PUR(NS) 523, 143 F(2d) 945.

The gist of the injury complained of was that the refinancing would impair the value of his stock by reducing the interest income of the holding company. He charged illegality and fraud.

It was said to be apparent that a demand that his corporation seek a review of the order, which it had itself sought, would be futile. The Supreme Court did not consider it necessary to pass on the merits of the controversy, but it did hold that he had a right to seek a review. *American Power & Light Co. v. Securities and Exchange Commission; Securities and Exchange Commission v. Okin.*

Exportation of Gas to Mexico Found Not to Be Consistent with Public Interest

An application under §§ 3 and 7 of the Natural Gas Act for authority to export natural gas to Mexico was denied by the Federal Power Commission on the ground that exportation would not be consistent with the public interest. Commissioners Draper and Olds dissented from the majority.

It was pointed out that, in resolving the public interest related to the construction and operation of interstate natural gas facilities during the war emergency, the commission had applied in general the policy that such facilities should be confined to those necessary for the maintenance of supplies adequate for existing markets and had limited its authorization thereto. The commission said it was unaware of any reason which would justify applying a different criterion where the markets to be supplied were located outside the United States.

It seemed to Commissioner Olds, dissenting, that the majority had failed to distinguish the issues in this case from those in numerous cases in which the commission had been called upon to grant certificates for new pipe-line capacity from the southwestern reserves. He said he was sure it was not the intention of the majority to hold that the commission was never going to authorize new transportation of natural gas except to meet a war emergency.

The commission believed that, in determining the question posed by § 3 as to consistency with the public interest, it was appropriate to make an inquiry into the availability of natural gas and other fuels for utilization within the country of the exportee. If substantial quantities of natural gas are available in Mexico for use by the industries affected, the commission would feel constrained under the circumstances to withhold authorization to export.

It was said to be clear from the record that, contrary to the common experience and required practice of producers in the United States, no restriction had been

placed upon civilian production by the industries affected as compared with production in aid of the war effort. On the contrary, it was apparent that preference was being given to civilian production over apparently essential war production. *Re Reynosa Pipe Line Co. (Opinion No. 122, Docket Nos. G-594, G-595).*

Telephone Base Rate Area Extended

THE Wisconsin Telephone Company was ordered by the Wisconsin commission to extend its Green Bay exchange base rate area to include an additional area, upon a finding that discrimination existed against subscribers in the added area. In the city of Green Bay the company renders urban service at basic flat rates within the territory known as the local base rate area. Urban service is likewise available beyond such area at the basic flat rate plus an additional charge designated as an excess mileage rate.

The company opposed any extension of the area primarily because discontinuance of excess mileage charges would reduce revenues which could not be recouped, under war restrictions, through persuasion of subscribers to use higher-priced classes of service. The company cited the commission's decision in the Madison Case (1942) 43 PUR(NS) 193 that telephone rates should be frozen for the duration except in cases of dire financial straits or in cases involving removal of unjust discrimination.

The evidence showed that the area contained as many homes as many other areas of the same size in the local base rate area. The area was no farther from the company's central office than portions of the base rate area. The commission said:

> The local base rate area generally includes that part of an exchange area located near the telephone central office, in which area the primary classes of telephone service can be rendered to all subscribers at the same rates for the respective classes of service without unreasonable discrimination among subscribers because there are no wide variations in cost of service. The base rate areas are established so that subscribers who can be served at about the same average cost are not required to carry the higher costs incident to furnishing service over long lines into sparsely settled territory.

It was concluded that there was unreasonable discrimination because of the application of the excess mileage charges for urban service. Moreover, the reduction in revenues would not materially affect the exchange revenues and would not result in any substantial burden being placed on subscribers within the present base rate area. Removal of this discrimination was said to be consistent with the doctrine stated in the Madison Case. *Denessen et al. v. Wisconsin Telephone Co. (2-U-2033).*

Short-term Note Permitted for Bond Retirement After State Ruling

THE Kings County Lighting Company was permitted by the Securities and Exchange Commission to issue and sell a short-term promissory note, the proceeds to be used for the immediate retirement of outstanding mortgage bonds. This was to meet the situation created by the action of the New York commission in denying authority to issue refunding bonds without competitive bidding in *Re* Kings County Lighting Co. Case 11929. (See PUBLIC UTILITIES FORTNIGHTLY, June 21, 1945, page 853.)

The company, in April, had filed an application under § 6(b) of the Holding Company Act requesting an exemption from the competitive bidding requirements for the issue and sale of first mortgage bonds to John Hancock Mutual Life Insurance Company. When the

New York commission disapproved this sale without competitive bidding on May 22, 1945, the company amended its application before the Federal commission to provide for the issue and sale of the bonds at competitive bidding.

But since the bonds were redeemable on four weeks' notice, upon the semiannual interest payment dates of July 1st and January 1st, it was too late to complete the sale at competitive bidding before issuing a redemption call on June 1st.

It therefore made its proposal to obtain a short-term loan as interim financing and to repay such loan from the proceeds of the refunding bonds to be sold later at competitive bidding.

The insurance company agreed to buy the note, the issuance of which was not subject to approval by the state commission, and agreed to extend its agreement to purchase the bonds. The Federal commission said:

> The issue and sale of the promissory note of Kings are subject to the provisions of § 6(a) of the act and must, therefore, satisfy the applicable requirements of § 7. Since the proceeds of the promissory note, together with treasury cash, are to be utilized by Kings to redeem its presently outstanding bonds, it appears that the promissory note is to be issued and sold solely for the purpose of discharging outstanding securities of Kings. Accordingly, such issue and sale satisfy the provisions of § 7(c)(2)(A). No state commission having informed us that the state laws have not been complied with, the provisions of § 7(g) appear to be satisfied. The sale of the promissory note is not subject to the competitive bidding requirements of Rule U-50 by reason of the exemption provided by paragraph (a)(2) thereof.
>
> Ordinarily, we would not deem it desirable or appropriate for a public utility company to have all its outstanding debt in the form of a short-term obligation as is here proposed. However, the promissory note of Kings is to be issued solely as interim financing for the purpose of retiring immediately its outstanding mortgage debt and is to be replaced by the 30-year first mortgage bonds to be sold shortly at competitive bidding. Moreover, the company has the stand-by agreement of John Hancock to purchase the first mortgage bonds at a cost of money to the company of 3-1/10 per cent. Under the circumstances of this case, we do not deem it necessary to enter any adverse findings under § 7(d).
>
> We shall permit the declaration as to the issue and sale by Kings of its short-term promissory note to become effective, and shall reserve jurisdiction over: (1) all fees and expenses incurred by Kings in connection with the issue and sale of such note; and (2) all aspects of Kings' proposal to issue and sell its 30-year first mortgage bonds.

Re Kings County Lighting Co. (File No. 70-1074, Release No. 5837).

Cost Allocation in Fixing Water Rates

THE Wisconsin commission, modifying rate schedules prescribed for a municipal water utility in *Re* Menasha (1944) 57 PUR(NS) 510, discussed the question of cost allocations where it was complained that the rates prescribed required the utility to furnish water at less than cost of pumpage. The utility had divided the expenses related to source of supply, pumping, purification, and distribution by the total gallons pumped, arriving at an operating cost of about 5.5 cents per thousand gallons delivered exclusive of fixed charges. By adding depreciation and taxes and dividing by the gallons pumped, one derives a cost of 9.92 cents per thousand gallons pumped. The commission said:

> Obviously the foregoing calculations represent only average unit costs. Their relationship to actual, properly allocated costs is remote. No consideration is given in such calculations to the substantial fixed and constant costs which properly are allocable to fire-protection service. Apparently the utility made no attempt to separate and allocate the fixed, constant, and variable costs applicable to the various classes of service rendered. In the absence of such determination, the average costs which have been calculated are meaningless.

The commission discussed its method of determining costs of water service by proper allocation to the classes and kinds of service furnished. The two principal categories of service, it was pointed out, are general service and fire protection. The commission continued:

The fallacy of using the average cost of furnishing any quantity of water in the determination of rates is well demonstrated in the case of fire-protection service. Normally the volume of water involved in furnishing such service is negligible. At the most, a few fire streams a year used for periods of short duration account for the entire volume of water used. However, the necessity for furnishing a large volume of water for short periods at a pressure sufficient to combat fires has a pronounced effect on the extent of plant facilities which must be installed. Aside from the relatively small investment in special facilities, such as hydrants and connections, oversize mains must be provided and source of supply, pumping and storage facilities must be of such size as to meet the heavy draughts of water required to combat fires. The costs incurred in such service are almost entirely of a stand-by nature and could not possibly be determined by the use of the average cost of all water furnished by the utility. They consist almost entirely of capacity costs and must be determined by allocation as between general service and fire-protection service.

Shifting of costs to general service in order to reduce fire-protection rates was called discriminatory. The commission said, however, that the utility might be permitted to reduce hydrant rates on condition that it accepted a reduction in the return from that class of service and that no part of such deficiency be included in the cost to general service.

Rates for fire protection, it was said further, cannot be properly based upon a per hydrant charge, since the number of hydrants in use does not have a material bearing upon cost of service. *Re City of Menasha (2-U-1640).*

Service Duty Not Extended beyond Scope Of Territorial Agreement

A COMPLAINT against the refusal of Madison Gas & Electric Company to serve the complainants was dismissed by the Wisconsin commission on the ground that the evidence was not sufficient to show that this company had a duty to extend its service to them. They had requested, in effect, that the commission set aside a territorial agreement.

The complainants resided in the area of service reserved to Wisconsin Power & Light Company by a territorial agreement between that company and a predecessor of Madison Gas & Electric Company.

The latter utility company had never held itself out to serve in two sections of the town except upon modifications of the territorial agreement. These modifications had not resulted in extensions into the section where the complainants resided.

The Wisconsin Power & Light Company was serving customers in this area and was prepared to render service to the complainants if they could qualify under requirements of the War Production Board. The commission said they desired service chiefly because of a rate differential between the companies. *Ellickson et al. v. Madison Gas & Electric Co. et al. (2-U-2028).*

Other Important Rulings

A RAILROAD was authorized to transport empty tin cans prepared for detinning purposes between specified points free of charge to enable the War Production Board to avail itself of another company's offer to use its empty semitrailers for the handling of tin cans between those points without charge, where the proceeds received from the sale of the cans would not be enough to pay the cost of collection, let alone freight, it being a labor of patriotism all along the line to collect cans in quantity. *Re Denver & Rio Grande Western Railroad Co. (Miscellaneous Docket No. 199, Decision No. 24288).*

The Wisconsin commission authorized

a telephone company to increase rates in an amount which indicated a return of approximately 6 per cent on the rate base, where the Office of Price Administration withheld any objection to the increase. *Re La Valle Telephone Co. (2-U-2026).*

The Wisconsin commission authorized a municipal electric utility to provide additional facilities, the commission stating that from purely physical considerations it cannot be said that convenience and necessity require installation of a generating unit when purchase power is available, but that they do require the management to provide facilities of some type for its customers, and if more than one method is available and costs can be kept comparable, the management should have a choice. *Re City of Lake Mills (CA-2176).*

The Missouri commission held that a railroad company is not required to keep and to maintain a depot solely because the deed of property to the railroad company was given in consideration of a depot's being built, and an application for authority to discontinue the station must be determined on its merits. *Re Missouri-Kansas-Texas Railroad Co. (Case No. 10607).*

The supreme court of North Carolina held that the statute prohibiting a municipality from contracting to purchase supplies at a cost of $1,000 or more, except to the lowest responsible bidder after two advertisements, does not apply to a town's purchase of electricity at wholesale for redistribution through the town's electric plant. *Mullen v. Town of Louisburg et al. 33 SE(2d) 484.*

The New York commission, in approving a lease of busses, subject to conditions, stated that the fact that busses are in operation shows that they have not been fully depreciated; approved a return of 5 per cent for determining rental; found that average operating cost, including depreciation and return, would be about 15 cents a mile; and approved a rental figure of 15 cents per bus mile. *Re Manhattan & Queens Bus Corp. (Case 11769).*

The Wisconsin commission authorized an increase in rates of a municipal gas utility operating in two municipalities, upon a showing that operation had been conducted at a loss and that with the contemplated rate increase a return of only 2.56 per cent on the adjusted net book value rate base would be earned. But the commission made its approval subject to the terms of a stipulation between the two municipalities that rates would be identical in both communities. *Re City of Ironwood (2-U-1964).*

The Wisconsin commission, in authorizing an increase in telephone rates where a company was operating at a loss, approved the withdrawal of a 2-party business service rate, the demand for which had been nonexistent for many years and approved a rate for rural multiparty service the same as the present urban multiparty service rate, since the few remaining rural grounded circuits were so situated as to be relatively free from inductive interference and complete metallization was imminent. *Re Cameron Farmers Telephone Co. (2-U-2027).*

The Wisconsin commission, in denying authority to discontinue passenger service, expressed the opinion that it should not authorize such complete abandonment unless this would cause little, if any, public inconvenience and unless abandonment is necessary as a means of making possible the continuance of freight service to the public. *Re Green Bay & Western Railroad Co. (2-R-1643).*

NOTE.—The cases above referred to, where decided by courts or regulatory commissions, will be published in full or abstracted in *Public Utilities Reports.*

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Points of Special Interest

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TITLES

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UNITED STATES SUPREME COURT

Ambassador, Incorporated et al.

v.

United States of America et al.

No. 446
— US —, 89 L ed —, 65 S Ct —
May 21, 1945

APPEAL *from judgment of District Court of the United States for the District of Columbia granting injunction to restrain hotels from making charges against guests in connection with interstate or foreign message toll service in violation of filed tariffs; affirmed. For decision of court below, see (1944) 55 PUR (NS) 31, and for decision by Federal Communications Commission, see (1943) 52 PUR(NS) 141.*

Telephones, § 4.1 — Jurisdiction of Federal Commission — Regulations binding on subscribers.

1. The supervisory power of the Federal Communications Commission is not limited to rates and to services, but its power over regulated companies extends to charges, practices, classifications, and regulations for and in connection with communication service, including regulations binding on subscribers as to the permissible use of rented communications facilities, p. 197.

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2. The Federal Communications Act authorizes telephone companies to promulgate rules binding on PBX subscribers as to the terms upon which the use of facilities may be extended to others not themselves subscribers, p. 197.

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3. An objection to a regulation of a telephone company governing the terms upon which the use of telephone facilities may be extended to others not themselves subscribers must be addressed to the Commission and not as an original matter brought to the court, where the claim of unlawfulness is grounded in lack of reasonableness, p. 198.

Rates, § 13.3 — Jurisdiction of Communications Commission — Telephone surcharges — Hotels.

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Rates, § 568 — Telephone — Surcharges — Hotels.

5. Charges to guests made by a hotel in connection with toll calls, when not based on the service rendered but varying in accordance with the toll charge made by the telephone company for communications services, are in violation of a filed tariff provision that message toll telephone service furnished to hotels shall not be made subject to any charge by any hotel in addition to the message toll charges of the company as set forth in the tariff, p. 198.

Injunction, § 54 — Parties — Hotels imposing surcharges — Violation of tariff.

6. Hotels imposing surcharges on guests in addition to message toll charges of a telephone company, in violation of a tariff provision, are persons interested in and affected by the regulation and, therefore, are proper parties defendant in an action to restrain the making of such charges, p. 198.

Injunction, § 27 — Telephone surcharges by hotels — Violation of company tariffs.

7. Hotels should be enjoined from imposing surcharges, in violation of filed telephone tariffs, for tolls or interstate phone calls made by hotel guests, p. 198.

Injunction, § 27 — Against violation of tariff — Hotel customers.

8. A court may properly conclude that the failure of hotels to indicate, for four days after the effective date of a regulation prohibiting surcharges, that they intend to comply with the regulation, justifies an injunction against the hotels, although the court does not grant an injunction which would compel the telephone companies to cut off service for violation of the regulation, p. 199.

Appeal and review, § 25 — Scope of review — Basis for injunction — Hotel status as agent or subscriber.

9. The court, in reviewing a judgment granting an injunction to restrain hotels from imposing surcharges on telephone calls by guests in violation of a tariff filed by the telephone company under the Communications Act, need not decide whether the hotels are agents of the company or are subscribers in rendering hotel telephone service, as it is not necessary in determining the application of a regulatory statute to attempt to fit the regulated relationship into some common-law category, but it is sufficient to say that the relation is one which the statute contemplates shall be governed by reasonable regulations initiated by the company subject to the approval and review of the Federal Communications Commission, p. 199.

Mr. Justice JACKSON delivered the opinion of the court: This action was instituted at request of the Federal Communications Commission in the district court of the United States for the District of Columbia. The Chesapeake & Potomac Telephone Co., which is engaged in rendering telephone service in the District of Columbia, and the American Telephone and Telegraph Co. were made defendants, as also were the appellants, comprising the proprietors of twenty-seven hotels in the District of Columbia. The complaint asks and the court below has granted an injunction which forbids the hotels to make charges against their guests in connection with any interstate or foreign message toll service to or from their premises, other than the toll charges of the telephone companies and applicable Federal taxes.

The prohibition is based on a provision to that effect in the tariff filed by the telephone companies. Upon the trial, evidence was limited by stipulation to the facts about the Shoreham hotel, accepted as typical of all defendants.

Telephone service is available to patrons of the hotel without a charge by the hotel. In or near the lobbies, telephone booths have direct connection with telephone company central offices. Calls can there be made without involving the services of the hotel personnel and at the usual tariff rates of the telephone company paid through its coin boxes.

However, modern hotel standards require that telephone service also be made available in the rooms. Equipment for this purpose is specified by the hotel but is installed and owned by the telephone company. The hotel pays a monthly charge for its use, and its operation is at the hotel's expense. The operating cost is substantial, rentals of the Shoreham in 1943 being $8,680.10 and payrolls for operation amounting to $21,895.62.

Typical equipment consists of a private branch exchange, known as a PBX board, connected with a number of outside or trunk lines and also with extension lines to each serviced room, and other items. This equipment permits calls for various kinds of room service, communication between guests, and calls from station to station within the hotel for which no use of other lines of the telephone company is necessary. The same switchboard and its hotel-employed operators also handle both incoming and outgoing calls for guests, including many long-distance messages.

So far as the telephone company is concerned, the toll message coming to its central office from the hotel switchboard is handled much as a similar message from a residence or business station. Within the hotel, however, room telephone service necessitates additional labor as well as use of the equipment. When a call is made from the station in a room, it is placed with the switchboard operator employed by the hotel, and she in turn places the call with the telephone company's long-distance operator. It is customary also to render services described as secretarial. Incoming messages may be received during the guest's absence and memoranda of them are made for and delivered to him. Outgoing messages may be transmitted for the guest. Information as to his whereabouts may be left with the operator for communication to callers; he may arrange to be reached at other locations than his room; he may arrange to have telephone service suspended for a period; incoming calls may be limited to those from designated persons, and various other services helpful to comfortable living are supplied by those in charge of the interior telephone system.

Each long-distance call placed through the hotel's switchboard is charged by the telephone company to the hotel, not to the guest. The hotel pays the charge and is reimbursed, less credit losses, by collections from the guest. The reimbursement item is separately stated on the guest's bill and is not itself involved in this controversy.

The hotel also seeks to recoup the cost of its service, including equipment rentals, and perhaps some margin of profit, by a service charge to the

guests who make long-distance calls from their rooms. This charge varies in different hotels but this typical case shows charges of 10 cents for toll calls where the telephone tariff is one dollar or less, 10 per cent of the telephone tariff where the charge is more than one dollar, with a maximum of three dollars per call. This service charge appears on the guest's bill as a separate item, but is stated, like the reimbursement charge as "Long distance," abbreviated to "LDIST."

In January, 1942, a proceeding was instituted by the Federal Communications Commission for the purpose of determining whether the charges collected by hotels, apartment houses, and clubs in the District of Columbia in connection with interstate and foreign telephone communication were subject to the jurisdiction of the Commission under the Communications Act and what tariffs, if any, should be filed with the Commission showing such charges. No such tariffs were on file with the Commission at the time the proceeding was instituted.

The Commission, December 10, 1943, 52 PUR(NS) 141, found that it does have jurisdiction under the Communications Act over the charges collected by hotels and others and ruled that, if such charges are to be collected at all, they must be shown on tariffs on file with the Commission. It thought that the hotel should be regarded as the agent of the telephone companies. It issued an order directing the two telephone companies either to file appropriate tariffs showing charges collected by the hotels in connection with interstate and foreign telephone communications or to file an appropriate tariff regulation containing a specific provision with respect to conditions under which such interstate and foreign service would be furnished to hotels, apartment houses, and clubs.

Confronted with these alternatives, The Chesapeake & Potomac Telephone Company filed a tariff provision in which the American Telephone and Telegraph Company concurred, which reads as follows:

"Message toll telephone service is furnished to hotels, apartment houses, and clubs upon the condition that use of the service by guests, tenants, members, or others shall not be made subject to any charge by any hotel, apartment house, or club in addition to the message toll charges of the telephone company as set forth in this tariff."

This tariff provision became effective by its terms February 15, 1944. Four days later, this suit was instituted to enjoin the hotels from collecting charges made in violation of the tariff provision, and to enjoin the telephone companies from furnishing such service to these hotels or others which continued to make charges.

The district court sustained the validity of the tariff.[1] It regarded the hotels as subscribers rather than as agents of the telephone companies. It held that the tariff was violated by collection of surcharges from guests who make interstate or foreign long-distance telephone calls or receive such calls "collect." The court did not pass upon the justness or reasonableness of the tariff, being of opinion that such questions were in the first instance to be submitted to and determined by the

[1] The opinion was rendered orally and is not reported. [Reported in United States of America v. American Teleph. & Teleg. Co. (1944) 55 PUR(NS) 31.]

Commission in appropriate proceedings. An injunction issued against the hotels but not against the telephone companies, the court, however, retaining jurisdiction over the proceedings as to all defendants for the purpose of issuing such further orders as might be necessary to effectuate its decision. Direct appeal was taken by the hotel defendants to this court.[2]

It has long been recognized that if communications charges are to correspond even roughly to the cost of rendering the service, the use to which telephone installations may be put by subscribers must be subject to some kind of classification and regulation which will conform the actual service to that contracted for. Familiar examples are the classification of residence as against business service with a requirement that the subscriber confine his use of the instruments accordingly. Of course, the subscriber who installs a private branch exchange with multiple trunk lines and many extensions has obviously contracted for a class of service different from one whose installation consists of a single station. One of the problems incident to the service of a subscriber who takes facilities greatly in excess of his own needs in order to accommodate others is to fix upon what terms he may extend the use of telephone facilities to others. This is an aspect of the problem of resale of utility service which is not confined to the telephone business.[3]

[1, 2] The Communications Act of 1934 recognizes that tariffs filed by communications companies may contain regulations binding on subscribers as to the permissible use of the rented communications facilities. The supervisory power of the Commission is not limited to rates and to services, but the formula oft repeated in the act to describe the Commission's range of power over the regulated companies is "charges, practices, classifications, and regulations for and in connection with such communication service." 48 Stat 1070, 47 USCA § 201(b). It is in all of these matters that the act requires the filed tariffs to be "just and reasonable" and declares that other-

[2] Pursuant to § 2 of Expediting Act, 32 Stat 823; 36 Stat 1167; 15 USCA § 29; 49 USCA § 45; and Communications Act of 1934, 48 Stat 1093, 47 USCA § 401(d). Also § 238(*l*) of Judicial Code as amended, 43 Stat 938, 28 USCA § 345(1).

[3] Cf. Re New York Teleph. Co. (NY 1938) 26 PUR(NS) 311, (NY 1939) 30 PUR(NS) 350; People ex rel. Public Service Commission v. New York Teleph. Co. (1941) 262 App Div 440, 40 PUR(NS) 511, 29 NY Supp(2d) 513, aff'd without opinion (1942) 287 NY 803, 40 NE(2d) 1020; Hotel Pfister v. Wisconsin Teleph. Co. 203 Wis 20, PUR 1931A 489, 233 NW 617, 73 ALR 1190; Jefferson Hotel Co. v. Southwestern Bell Teleph. Co. (Mo 1936) 15 PUR(NS) 265; Re Hotel Marion Co. (Ark) PUR1920D 466; Connolly v. Burleson (NY) PUR1920C 243; Re Hotel Telephone Service and Rates (Mass) PUR1919A 190; Hotel Sherman Co. v. Chicago Teleph. Co. (Ill) PUR1915F 776; 1015 Chestnut Street Corp. v. Bell Teleph. Co. of Pennsylvania (Pa) PUR1931A 19, (Pa 1934) 7 PUR(NS) 184; Budd v. Southwestern Bell Teleph. Co. (Mo 1939) 28 PUR (NS) 235.

Remetering of electric energy creates similar problems of regulation, often dealt with by tariff prohibition of remetering. See Lewis v. Potomac Electric Power Co. 62 App DC 63, PUR1933C 114, 64 F(2d) 701; Karrick v. Potomac Electric Power Co. (DC Sup Ct) PUR1932C 40; Florida Power & Light Co. v. State ex rel. Malcolm, 107 Fla 317, PUR 1933E 157, 144 So 657; Sixty-seven South Munn v. Public Utility Comrs. 106 NJL 45, PUR1929E 616, 147 Atl 735, aff'd (1930) 107 NJ L 386, 152 Atl 920, cert. denied (1931) 283 US 828, 75 L ed 1441, 51 S Ct 352; Public Service Commission v. J. & J. Rogers Co. 184 App Div 705, PUR1919A 876, 172 NY Supp 498; People ex rel. New York Edison Co. v. Public Service Commission, 191 App Div 237, PUR1920C 526, 181 NY Supp 259, aff'd (1920) 230 NY 574, 130 NE 899.

wise they are unlawful.[4] By none of these devices may the companies perpetrate an unjust or unreasonable discrimination or preference.[5] All of these must be filed with the Commission in the form it prescribes, may not be changed except after due notice, and must be observed in the conduct of its business by the company.[6] These provisions clearly authorize the companies to promulgate rules binding on PBX subscribers as to the terms upon which the use of the facilities may be extended to others not themselves subscribers.

Of course, such authority is not unlimited. The telephone companies may not, in the guise of regulating the communications service, also regulate the hotel or apartment house or any other business. But where a part of the subscriber's business consists of retailing to patrons a service dependent on its own contract for utility service, the regulation will necessarily affect, to that extent, its third party relationships. Such a regulation is not invalid per se merely because, as to the communications service and its incidents, it places limitation upon the subscriber as to the terms upon which he may invite others to communicate through such facilities.

[3, 4] It is urged, however, that the regulation in question is unlawful because it is unreasonable. It is said that it invades the relationship between hotel and guest excessively, and denies to the hotel the right reasonably to recoup its cost and to profit by the services it renders. But we agree with the district court that where the claim of unlawfulness of a regulation is grounded in lack of reasonableness, the objection must be addressed to the Commission and not as an original matter brought to the court. We think that the act confers jurisdiction upon the Commission to hear appellants' grievances against the substance of this regulation. Indeed, appellants inform us that the American Hotel Association, on behalf of its members, including the appealing hotels, has filed a formal complaint with the Commission alleging that the new provision of the tariff schedule was unreasonable, discriminatory, and unlawful, and asking for investigation and, at the same time, asserting that the tariff was illegal. Action on that complaint has been held in abeyance by the Commission pending the final decision on the jurisdictional question in this suit.

[5] It is clear that the charges being made in this case violate the regulation. The charges made are not based on the service rendered by the hotel but vary in accordance with the toll charge made by the telephone company for communications services. So far as appears, the service rendered by the hotel in handling a guest's toll call from Washington to Baltimore is substantially the same as for a call to San Francisco. But for like service, the charge varies with the amount of the telephone tariff for the communication. The guest's charges are so identified with the communications service that they are brought within the prohibitions of this regulation.

[6, 7] Since the regulation, apart from questions of reasonableness which must be presented to the Commission, is a valid regulation of the subscriber's use of the telephone facilities involved,

[4] 47 USCA § 201.
[5] 47 USCA § 202.
[6] 47 USCA § 203(a), (b), (c).

a departure from the regulation is forbidden by the act and the prosecution of an action to restrain a violation is authorized.[7] When an action for enforcement is instituted in any district court, the act expressly provides that it shall be lawful "to include as parties, in addition to the carrier, all persons interested in or affected by the charge, regulation, or practice under consideration," and decrees may be made against such parties in the same manner and to the same extent as authorized with respect to carriers.[8] One can hardly gainsay the government's assertion that the appellants here are persons interested in and affected by the regulation in question and, therefore, are proper parties defendant in the action and injunction could properly issue against them.

[8] It is urged, however, that inasmuch as the court did not enjoin the telephone companies, the hotels should not be enjoined. Four days after the effective date of this regulation, the hotels had indicated no intention to comply with it although they had had due notice. It was well within the discretion of the trial court to conclude that this justified an injunction. Four days of default by the subscriber, however, might not be regarded as requiring an injunction which would compel the telephone companies to cut off service on which many persons rely. We are unable to see that the hotels have been prejudiced by the failure to enjoin the telephone companies or are in a position to complain of the omission of what would have been an additional hardship to themselves.

[9] Much has been said in argument about the theory of the relationship between the hotel and the telephone company and the discrepancy between the view of the Commission that the contract created an agency and that of the district judge who said that the evidence fails to show that the hotels are agents of the telephone company, and held that "the hotels are subscribers." We do not think it is necessary in determining the application of a regulatory statute to attempt to fit the regulated relationship into some common-law category. It is sufficient to say that the relation is one which the statute contemplates shall be governed by reasonable regulations initiated by the telephone company but subject to the approval and review of the Federal Communications Commission.

Without prejudice to determination by the Commission of any of the questions raised in this case, we hold that the injunction was properly issued and the judgment below is affirmed.

Mr. Justice Black and Mr. Justice Douglas took no part in the consideration or decision of this case.

[7] 47 USCA § 401.
[8] 47 USCA § 411.

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission

v.

The Pennsylvania Railroad Company

Complaint Docket No. 13389
April 9, 1945

INVESTIGATION *to determine whether railroad company should file application for approval of abandonment of spur or industrial siding; investigation terminated.*

Service, § 34 — Jurisdiction of state Commission — Abandonment of spur track.

1. The state Commission has jurisdiction over the abandonment of a spur or industrial siding, since such abandonment is not governed exclusively by Federal law, the authority of the Interstate Commerce Commission not extending to the abandonment of spur, industrial, team, switching, or sidetracks located wholly within one state, p. 201.

Service, § 215 — Abandonment — Necessity of authorization — Siding serving one industry — Consent to removal.

2. A railroad need not obtain authority from the Commission to abandon service on a spur or industrial siding serving only one industry where the industry has ceased operations and requested the railroad to remove the siding, p. 201.

By the COMMISSION: The Commission on June 17, 1940, instituted an investigation upon its own motion, under the provisions of the Public Utility Law, for the purpose of determining whether The Pennsylvania Railroad Company, respondent, should file an application seeking Commission approval of the abandonment of service on the spur or industrial siding 1.22 miles in length in the borough of Johnsonburg, Elk county. On September 3, 1940, respondent filed a motion to dismiss for the following reasons:

"(1) Under the present circumstances neither the filing of an application for authority to abandon said industrial siding nor the Commission's approval of said abandonment is required by law.

"(2) Abandonment of said industrial siding is governed exclusively by Federal law.

"(3) The provisions of par. (d) of § 202 of the Public Utility Law are inapplicable, because:

"(a) Service over said industrial siding has ceased upon the request, explicit or implied, of the industry or industries previously served by said siding and now no longer in operation.

"(b) The matter of railroad connections with sidetracks and laterals is entirely regulated and controlled by the provisions of § 406 of the Public Utility Law."

[1] There is no merit to respondent's contention that the abandonment of an industrial siding is governed exclusively by Federal law. The United States Supreme Court has held that under the provisions of § I, pars. 18 and 22 of the Interstate Commerce Act the authority of the Interstate Commerce Commission does not extend to the abandonment of spur, industrial, team, switching or sidetracks located wholly within one state: Texas & P. R. Co. v. Gulf, C. & S. F. R. Co. (1926) 270 US 266, 70 L ed 578, 46 S Ct 263; Colorado v. United States (1926) 271 US 153, 70 L ed 878, 46 S Ct 452; United States v. Idaho (1936) 298 US 105, 80 L ed 1070, 56 S Ct 690. The Pennsylvania superior court recently held that the Pennsylvania Public Utility Law has jurisdiction over an industrial siding: Pennsylvania R. Co. v. Public Utility Commission (1943) 154 Pa Super Ct 272, 53 PUR (NS) 522, 35 A(2d) 584.

[2] Information now before us indicates that the siding served only one industry, the Castanea Paper Company, and at the time the industry ceased operations, it requested The Pennsylvania Railroad Company to remove the siding.

After full consideration of the other matters involved, we are of opinion and find that under the provisions of § 202(d) of the Public Utility Law, it is not necessary for a public utility to obtain a certificate of public convenience to discontinue service to a patron, and remove facilities used exclusively in furnishing service to that patron, where the patron requests the discontinuance of service or otherwise indicates that service is no longer desired and there are no crossings as defined by § 409 of the Public Utility Law involved or an application has been made to the Public Utility Commission for the abolition of such crossings; therefore,

It is *ordered:* That the investigation be and is hereby terminated.

WISCONSIN PUBLIC SERVICE COMMISSION

Re Tenney Telephone Company

2-U-2005, CA-2151
March 16, 1945; April 12, 1945

APPLICATION *for authority to increase telephone rates and to install new switchboard; rates prescribed and application for authority to install switchboard dismissed without prejudice.*

Rates, § 309 — Reconnection charges — Installation charges — Telephone rates.
1. A charge of $2 for moving telephones and $1 for installation and recon-

nection was disallowed when the subscriber would be able to avoid the higher charge for a move by requesting that service be discontinued and later have it reëstablished at the new location, but a charge of $1.50 for moves and installations and a reconnection charge of $1 were authorized, p. 203.

Rates, § 536 — Telephone — Value of service.

2. The fact that rural telephone service is of less value than urban telephone service because of the difficulty of distinguishing code rings and disturbances caused by companions on party lines and other factors are to be considered in determining the value of telephone service for rate-making purposes, p. 204.

Return, § 111 — Telephone company.

3. A return of approximately 5.9 per cent was deemed reasonable for a telephone company, p. 205.

Construction and equipment, § 1 — Telephones — Installation of new switchboard.

4. An application for authority to install a new telephone switchboard was dismissed without prejudice to renewal after the management of the company has decided on the type of switchboard it wished to install and was prepared to submit more complete data, where the application showed the need for new switchboard, where the company had received bids on several types of installations but had not committed itself to installation of a definite type of switchboard, had made no definite plans for acquiring such switchboard other than to ask for bids, where no data were available on the extent of rebuilding the outside plant that might be required to effect a change in the method of operation, and where a survey of subscribers' instruments had not been made to learn how many would be replaced, p. 206.

Service, § 451 — Telephone rural service — Abuse of service.

Statement that a telephone company serving rural party lines should use utmost diligence in instructing operators in manual code ringing and put forth every effort to locate rural subscribers who maliciously interfere with service of others by creating disturbances on a party line when it is in use, and after suitable warning discontinue service to such subscribers if the practice is continued, p. 204.

By the COMMISSION: On November 17, 1944, the Tenney Telephone Company filed an application for authority to increase rates for telephone service at its Alma exchange in the city of Alma in Buffalo county. Proof of service of notice of the proposal in said application upon the price administrator of the Office of Price Administration and consent to intervention by said price administrator in these proceedings, as required by general order No. 2 of the Public Service Commission of Wisconsin, was received with the application. On December 20, 1944, an application for authority to install a new switchboard at Alma was received and docketed for hearing concurrently with the application for permission to increase rates. On January 2, 1945, we received a letter from the Office of Price Administration, dated December 27, 1944, which informed us that it would

not participate in these proceedings.

Hearing was held February 2, 1945, at Alma before Examiner Samuel Bryan.

APPEARANCES: Tenney Telephone Company, by Pat H. Motley, Attorney, Alma; Adolph Maassen, Alma, in opposition; Orville P. Deuel, Rates and Research Department, of the Commission staff.

Opinion

The applicant serves approximately 540 subscribers in the city of Alma and the surrounding territory in the towns of Alma, Nelson, Lincoln, Belvidere, Gilmanton, Waumandee, and Modena. Unlimited interexchange service to Cochrane, Nelson, Gilmanton, Modena, and Mondovi is included with exchange service at the regular rates. Data from a 3-day peg count made by the applicant on January 29th, 30th, and 31st showed an average of approximately one-half call per subscriber per day to so-called free interexchange points. The present and proposed rates as stated in the application in this case are:

	Present		Proposed	
	Gross	Net	Gross	Net
Business one-party service	$6.50	$6.00	$8.25	$7.50
Residence one-party service	5.50	5.00	6.75	6.00
Residence multi-party service	4.50	4.00	6.00	5.25
Business extension-telephone service		1.80		3.00
Residence extension-telephone service		1.50		2.25

The application and the present filed rates of the applicant give rates for the classes of service listed above and no other exchange rates. However, information presented at the hearing and information given in the annual report of the applicant indicate that one- and 2-party business service are available and that rural multiparty service is of two classes; namely, business and residence. Exhibit 3 listed proposed rates for these classes of service and the rates authorized herein will include a 2-party business and rural business rate. All subscribers' lines classified as urban residence multiparty service, with one exception, have four or fewer telephones per line. The rates to be authorized will provide 4-party service in place of residence multiparty service. The testimony indicates that the one residence party line, on which five telephones are connected at present, will be divided when materials become available. The service on this line should be rendered at the 4-party rate until that time.

[1] The application includes a request for permission to apply a charge of $2 for moving telephones and $1 for installation and reconnection of telephones. Our experience has shown that a higher charge for moves than for service connections is often unworkable because the subscriber may avoid the higher charge for a move by requesting that service be discontinued and later have it reëstablished at the new location. We will authorize a charge of $1.50 for moves and installations, and a reconnection charge of $1. A rate of $1.50 for service connections is consistent with our finding in docket 2-U-1628 and other cases involving charges of this type.

The opposition to the proposed increase in rates came from rural sub-

scribers. The Commission received letters from four of the company's rural subscribers and one rural subscriber appeared at the hearing. The statements in opposition closely parallel those made in opposition at the hearing by Mr. Adolph Maassen.

In its letter of December 27th the Office of Price Administration asked that we consider a rate base suggested by it and directed our attention to the high estimate of operators' salaries in the company's budget for 1945. The suggested rate base approximates that determined by our staff and the company's estimate of expenses is discussed herein.

[2] A comparison of rates at Alma with those of surrounding communities shows that present rates are below the average and that the rates for urban service are proportionately lower than those for rural service. It was pointed out at the hearing that rural service is of less value than urban service because of the difficulty of distinguishing code rings and disturbances caused by companions on party lines. This and other factors are to be considered in determining the value of service. The utility should use utmost diligence in instructing operators in manual code ringing and every effort should be made to locate rural subscribers who maliciously interfere with service of others by creating disturbances on a party line when it is in use. After suitable warning the service of such subscribers should be discontinued if the practice is continued.

The amount of the proposed increases in rural rates was also attacked by the opponents of the application and the opinion was advanced that some rural subscribers would discontinue service if rates became too high. Nearly every proposal to increase rates for telephone service meets with the threat that service will be terminated by subscribers, but in general the number of subscribers who discontinue service following an increase in rates has been insignificant. However, studies made by our staff show a correlation between the level of rural rates and the rapidity with which service is discontinued during times of economic distress.

Our analysis of the expenses of the applicant shows that the proposed rates would bring in revenue sufficient to meet all expenses and a return in excess of 6 per cent on the rate base found to be proper for use in this case. We believe the difference between the rates applied for and the rate required to yield needed revenue should be applied to reduction of the proposed rate for rural residence service and 4-party urban service.

The principal reason of the utility for seeking to increase rates is to meet additional expenses resulting from higher wages and salaries. These major wage increases were necessitated by the provisions of the Federal Wages and Hours Act which became effective for the applicant on July 17, 1944. According to the testimony wages were increased on March 1 and July 17, 1944, and two additional operators were added during the year. In its statement of estimated expenses for 1945 as given in Exhibit 3, the company estimated operators' salaries at $4,731, which is 210 per cent of the average of $2,250 expended for this item for the years 1940–1943, inclusive. The testimony indicates that operators' salaries, including the wages

of two new operators, were increased a total of $1,600 annually during 1944. According to information in our files, operators' salaries from January 1, 1944, to November 30, 1944, were $2,812 and the amount expended for this purpose during one entire year was $3,150. From these facts we determine that in December operators were paid $338. Testimony shows that a full force of operators was employed during December and that all wage increases were effective during that month. On the basis of December payments we estimate the annual expenditures for operators' wages to be approximately $4,000.

An estimate of the applicant's revenue under the rates authorized herein, together with an estimate of the operating revenue deductions for 1945, is given below. The operating expenses, with the exception of operators' wages, are those submitted by the company in Exhibit 3.

Estimated Income Statement

Operating Revenues	
Local Service Revenue	$10,736*
Toll Service Revenue	1,400**
Miscellaneous Revenue	100
Total Revenues	$12,236
Operating Revenue Deductions	
Telephone Operating Expense	
Repair labor	$1,800
Repair material and supplies	550
Other maintenance expense	460
Station removal and changes	65
Operators' wages	4,000
Traffic expense	150
General office salaries	520
Other general expense	935
Total Operating Expenses	$8,480
Depreciation Expense	1,500
Taxes	900
Total Operating Revenue Deductions	$10,880
Available for return	$1,356

* Computed at net rates less $300 for additional discounts to subscribers who pay annually in advance.

**Company's estimate based on 1943 toll revenues.

[3] The net book value of property and plant devoted to telephone service based on figures reported to the company on December 31, 1944, was $20,906. The net book value was determined by using the reported gross book value of property and plant of $45,288 less a reported depreciation reserve of $24,382 as of December 31, 1944. The addition of an allowance for working capital and materials and supplies on hand gives a rate base of $22,906 which we consider reasonable for purposes of this case. We estimate that a return of approximately 5.9 per cent on the assumed rate base will be afforded to the company under the rates which we will authorize.

Present quarterly rates for exchange service are quoted on a gross and net basis with a difference of 50 cents between gross and net rates. Payment may be made at the net rate during the first month of the quarter. Subscribers may pay for exchange service annually in advance during January of each year and receive a discount of $1 from the annual net rates. The proposed rates retain the net and gross rate and the $1 discount for annual payment. However, it is proposed to increase the difference between the gross and net rate to 75 cents and to apply the net rate during the first month of the quarter 25 cents above the net rate during the second month of the quarter and 50 cents above the net rate during the third month of the quarter. Gross rates would apply to all bills paid after the last day of the quarter. The treasurer of the company, Mrs. Augusta Hitt,

testified that she did not know of any need for a greater differential between gross and net rates as a means of encouraging prompt payment. The record in this case shows that in 1944 approximately 90 per cent of the subscribers paid for service at the net rate. We believe that no need has been shown to exist for a change in the billing and discount practices, and the rates we will authorize will provide a gross rate that is 50 cents above the net rate.

[4] An application to replace the existing switchboard was placed before us concurrently with the application for permission to increase rates. The switchboard in use in Alma at present is an American switchboard, manufacture of which has been discontinued according to the testimony. The switchboard was installed about 1925, and at the time of the hearing in this case was in good operating condition. However, the amount of maintenance work required to keep the switchboard in good condition has increased in recent years, and maintenance has become a problem because new parts are no longer available.

It is the opinion of witnesses that a combination switchboard with common battery operation for urban service and magneto equipment for rural and interexchange service should be installed. The company has received bids on several types of installations, and the management has not committed itself to installation of a definite type of switchboard and has made no definite plans for acquiring a proposed switchboard other than to ask for bids on several types of boards from manufacturers. No data are available on the extent of rebuilding the outside plant that might be required to effect a change in the method of operation, nor has a survey of subscribers' instruments been made to learn how many would be replaced. The applicant has shown a need for a new switchboard but because of the lack of a definite proposal, we believe this application should be dismissed without prejudice to a renewal of the application after the management of the Tenney Telephone Company has decided on the type of switchboard it wishes to install and is prepared to submit more complete data.

Findings

The Commission finds:

1. That the present rates for exchange service of the Tenney Telephone Company are inadequate and that the rates applied for, in so far as they differ from the rates herein prescribed, are unreasonable.

2. That the rates herein authorized are adequate and reasonable.

3. That the proposal of the applicant relative to installation of a new switchboard is indefinite and data are incomplete to the extent that it is impossible to determine whether or not public interest, convenience, and necessity would be served by granting a certificate of authority in these proceedings.

Supplemental Order

In our order of March 16, 1945 (printed herewith), in the above-entitled matter the exchange rates authorized included a 2-party business telephone service rate, a rural business telephone service multiparty rate, and a provision for a discount of $1 per month from the net rate for payment

of telephone bills annually in advance if such payment is made during the month of January.

A letter from the applicant's attorney, dated April 3, 1945, stated that Exhibit 3, which contains a classification of subscribers is in error in that there are not now and have never been any subscribers of the applicant classified as 2-party business subscribers, and that the company does not have a classification of service known as rural business multiparty service. There is no demand for urban 2-party business service and the utility desires to continue its long-established practice of classifying all rural multiparty subscribers' service as one class of service.

The past practice of the applicant has been to allow a discount of $1 per year from the net rate for payment for exchange service annually in advance. The statement in our order of March 16th that the discount is $1 per month is in error and should have been $1 per year. It was our intention in issuing the order to continue the practice with respect to annual advance payment discounts without change.

ORDER

It is therefore *ordered:*

1. That our order of March 16, 1945, in the above-entitled matter be and is hereby amended so as to delete the rate for 2-party business telephone service and rural multiparty business service from the schedule of rates authorized and substitute the term "Business or Residence Multiparty" for "Residence Multiparty" in the rate schedule prescribed by said order.

2. That our order of March 16, 1945, in the above-entitled matter be and is hereby amended in respect to the discount for payment for service annually in advance so as to provide that the discount applicable to charges under the rates for exchange service in said amended schedule shall be $1 per year instead of $1 per month.

NEW YORK SUPREME COURT, APPELLATE DIVISION, THIRD DEPARTMENT

Pavilion Natural Gas Company

v.

Milo R. Maltbie et al.

268 App Div 610, 52 NY Supp(2d) 915
December 29, 1944

REVIEW *of Commission orders relative to accounts of a natural gas company; orders and determinations of Commission confirmed.*

Accounting, § 56 — Write-up — Fictitious surplus.

1. A fictitious surplus, having no real existence in fact, and representing no capital outlay, should not be permitted to remain as a capital asset which would provide a distorted picture of a company's financial structure, p. 210.

Accounting, § 10 — Charge to depreciation reserve — Fictitious surplus.

2. The Commission is justified in requiring clear proof that sufficient accruals to depreciation reserve directly applicable to a fictitious surplus and sufficient to offset it has been set up before permitting the amount to be charged to depreciation reserve, p. 210.

Accounting, § 56 — Fictitious surplus — Charge to earned surplus.

3. A fictitious surplus created by charging to capital account an amount in excess of original cost of property, in the absence of proof that proper reserves for depreciation applicable to the amount in question have been created, may properly be ordered by the Commission to be charged to earned surplus, p. 210.

Accounting, § 13 — Loss on line construction — Construction approved by Commission member.

4. The fact that an application to the Commission for permission to construct a gas transmission line was made under pressure from a member of the Commission can have no effect on proper accounting methods applicable to the transaction when the venture turns out to be improvident, p. 213.

Accounting, § 13 — Loss on line construction.

5. A Commission requirement that a natural gas company charge to surplus instead of depreciation reserve a loss incurred in improvident line construction, originally charged to retirement reserve but found by the Commission to be an improper charge to that reserve, was not unreasonable, although the loss might have been handled in a different manner in the first place, p. 213.

Accounting, § 10 — Depreciation reserve.

6. The reserve for depreciation account is not an odd lot corner to which every loss may be thrown, irrespective of its source, but is a reserve set up solely for the purpose of providing for depreciation of physical plant in public service, p. 213.

Intercorporate relations, § 15 — Payment to affiliate — Burden of proof.

7. The burden rests on a gas company to establish clearly that a fee paid to an affiliated company was reasonably necessary and proper, p. 214.

Accounting, § 24.1 — Engineering fee — Payment to affiliate.

8. An amount paid by a gas company to an affiliated construction company for supervision of construction work, based on a percentage of the cost of the work, was properly ordered eliminated from fixed capital and directed to be charged to surplus, where there was no evidence to sustain the charge but it appeared that the company paid for all engineering services as a part of the cost of the work, p. 214.

Accounting, § 1 — Effect of authorization for securities.

9. A grant by the Commission of authority to issue securities, especially to an affiliate, does not constitute a blank certification of the correctness of a utility's capital accounts, p. 215.

Appeal and review, § 36.1 — Conclusiveness of decision — Accounting.

10. The Commission will not be interfered with unless there is clear proof that there was an abuse of discretion in refusing approval of a prior unauthorized transfer from retirement reserve to surplus account, p. 215.

(HILL, P.J., dissents.)

Before Hill, P.J., and Bliss, Heffernan, Brewster, and Foster, JJ.

APPEARANCES: Griggs, Baldwin & Baldwin, of New York city (Charles G. Blakeslee, of New York City, of counsel), for petitioner; Philip Halpern, of Albany (Laurence J. Olmsted, of Albany, of counsel), for respondents.

FOSTER, J.: We are asked to review, pursuant to Art 78 of the Civil Practice Act, certain orders of the Public Service Commission relative to the accounts of petitioner, the Pavilion Natural Gas Company. Petitioner is a public utility gas corporation subject to the jurisdiction of the Commission, and the latter on its own motion instituted in February, 1938, an investigation of petitioner's accounts and records, and as to the original cost of petitioner's property and the depreciation thereof. After the conclusion of the first set of hearings a report was made by the hearing commissioner, and thereafter the proceeding was reopened on the request of petitioner and additional hearings were held. Orders were then made directing petitioner to make certain specified entries on its books of account. The entries in controversy are these:

(1) Purchase of Pittsburgh Gas & Oil Company in 1915. Petitioner has been directed to write off the sum of $93,016.80 by charging the same to Earned Surplus. Petitioner contends that this amount should be charged against its Depreciation Reserve Account on the ground that full and proper reserves for depreciation of the property were duly set aside for this purpose.

(2) Loss on the construction of the Newfield line amounting to $29,009.79 which petitioner has been ordered to charge to Earned Surplus. Petitioner contends also that this amount should be charged to its Depreciation Reserve Account, because surplus for the depreciation of this property had also been duly set aside.

(3) A construction fee of $50,412 to Stemmler & Company. Petitioner was directed to eliminate this amount from its property accounts and charge the same to Earned Surplus on the ground that there was no proof in the case that petitioner received any services for the Stemmler fee, other than services for which it had already paid, as a part of the cost of work under contract, or as salaries to its own officers and employees. Petitioner contends that this amount is proper in that it covered necessary engineering services in connection with the construction of a new gas plant and also on the ground that the expenditure was approved by the Commission in 1928.

(4) Transfer of $196,159.62 surplus to Depreciation Reserve. This transfer was directed upon the ground that petitioner had previously trans-

ferred in 1926, in violation of the system of accounts then in vogue, this amount from its Retirement Reserve Account to its Surplus Account. Petitioner contends that this original transfer was proper because its depreciation reserve at the time was excessive, and that such fact was recognized by the Commission, and also that there is no finding as to the amount of the proper depreciation for reserve at the time of the transfer.

These items will be discussed in the order mentioned.

[1–3] In 1915 upon the joint application of the Pittsburgh Gas & Oil Company and petitioner the Public Service Commission granted permission to petitioner to purchase for the sum of $200,000 in cash all the rights, privileges, franchises, and property of the Pittsburgh Company. The order for the transfer provided that payment of the purchase price should not be made by petitioner until a written instrument of transfer had been executed and delivered. No such instrument was executed but all of the outstanding stock of the Pittsburgh Company was properly transferred to petitioner, and hence, of necessity a transfer of all of the vendor's property followed as a matter of course. The permission order also provided: "Nothing herein contained shall be deemed to construe as controlling the action of this Commission in any capitalization or rate proceeding which may hereafter be brought by The Pavilion Natural Gas Company, or its successors." Petitioner was thus placed on notice, if any notice was necessary, that the Commission's approval of the transaction did not necessarily mean its acceptance with finality for capitalization purposes the face value of the figures involved.

The two companies were closely affiliated, so closely in fact that the petition seeking approval of the transaction was executed for both companies by the same individual, and the petition itself contained the statement that the capital stock of both corporations was owned substantially by the same people. These companies were also closely affiliated to the corporation known as the Independent Natural Gas Company. This company owned all of the stock of petitioner at the time, and in addition practically all of its stockholders were also stockholders of the Pittsburgh Company. No cash was paid by petitioner to the Pittsburgh Company because apparently on account of the interlocking interests no payment was required except a small payment to the minority stockholders of the Pittsburgh Company, and apparently whatever cash was needed for this purpose was furnished by the Independent Natural Gas Company. After the transaction petitioner entered upon its books a journal entry which debited $200,000 to an asset account called "Pittsburgh Gas & Oil Company," and credited bills payable with a like amount. It is assumed, and there appears no other plausible explanation, that the latter entry was on account of petitioner's obligation to the Independent Natural Gas Company, the parent corporation. After the original debit entry of $200,000 the amount was broken down on petitioner's books as follows:

Land	$190,862.98
Mains	600.00
Accessory Works Equip.	8,537.02

Subsequently, the Independent Nat-

ural Gas Company merged its accounts with those of petitioner. The latter's liabilities to the parent corporation were canceled, and petitioner's surplus was credited with $200,000. We take this to mean that by the cancellation of the $200,000 intercompany debt an alleged capital surplus for petitioner in that amount was created. Still later, in 1926, when control of petitioner passed to the Genesee Valley Gas Company the liabilities of Independent were again cancelled, for reasons not apparent, but the $200,000 item remained in petitioner's surplus. It does not seem to be disputed that the actual cost of the physical property acquired from the Pittsburgh Company was only $38,247.89, despite the figures heretofore noted. Thus the petitioner, as a result of this interfiliate transaction, entered on its books as an asset a write-up of $161,752.11, i.e., the difference between $200,000 and the $38,247.89. It is conceded that this excess over cost value did not and does not now represent any property used or useful in the public service. The president of petitioner claimed that it represented the cost of creating the company and what it actually paid out for this purpose in excess of physical value, and it was his belief that this intangible value will remain as long as the business continues and prospers.

Petitioner originally claimed that this balance should be placed in the Miscellaneous Intangible Account as part of its fixed capital. The hearing Commissioner rejected this claim at the conclusion of the first set of hearings and recommended that this balance be charged to petitioner's surplus account. The case was then reopened upon petitioner's application and a new proposal was made. Petitioner abandoned the theory that the balance of $161,752.11 should be carried as an intangible asset in its capital accounts, and advanced the claim that it should be charged to petitioner's Depreciation Reserve. Petitioner alleged support for this claim on the ground that the entire balance had been amortized by accruals to three differently labeled accounts, but all set up for substantially the same purpose of creating a reserve, during the period which elapsed between the date of purchase and the date of the examination. The first account was known as "Accrued Amortization of Fixed Capital Reserve," in effect until July 1, 1924; which became thereafter "Retirement Reserve," in effect until January 31, 1938, which became thereafter "Depreciation Reserve."

In support of its new contention petitioner offered proof that in the year 1916 15 per cent of the total price for the Pittsburgh property, or $30,000 was charged to amortization or depreciation of that property and credited to Amortization Reserve. During the years 1918 to 1920 no accruals or amortization were made. During the years 1920 to 1925 annual accruals were made for this purpose on the basis of 5 per cent of petitioner's fixed capital upon all property installed after December 31, 1908. The $200,000 Pittsburgh purchase was included in the fixed capital or base upon which the 5 per cent annual accrual was computed, and the same method was employed for the first eight and a half months of the year 1926. Thus, petitioner asserted that from 1916 to 1926 it had set up

$84,988.45 in its reserve to take care of depreciation on the Pittsburgh transaction. During the latter part of 1926 and during the years from 1927 to 1941 petitioner adopted a different method of computing accruals to reserve and computed them on a basis of a percentage of revenues; that is, it allocated a fixed percentage of its gross revenues for such purpose. Petitioner computed these accruals for that period as amounting to $29,920. The Commission declined to accept this amount as representing proper accruals to depreciation during that period on the ground that they were based upon a percentage of revenues and as such could only be made for the purpose of retirement of petitioner's property and not for the purpose of absorbing improper items from capital accounts. It is pointed out that when accruals are based on revenues "any attempt to allocate a portion of the reserve to a particular piece of property is highly conjectural." Obviously under this method the accruals based on a percentage of gross revenues would have been the same whether or not the Pittsburgh property was included in fixed capital. It was also pointed out that petitioner failed to show that accruals from 1927 to 1941 were adequate not only for depreciation on its tangible operating property but also sufficient to provide for the retirement of the excessive book balance resulting from the Pittsburgh transaction.

The Commission, however, did accept petitioner's computation of $84,988.45 as representing accruals during the period from 1916 to 1926 as applicable to the Pittsburgh property. But as applied to the transaction it distinguished between accruals which it held should relate to the cost of the physical property, that is, $38,247.89, and those which should relate to the excessive book balance of $161,752.11. In determining the amount of accruals applicable to each element it followed the method of computation used by the company and on that basis found that $16,253.14 out of the accepted figure of $84,988.45 would be consumed in the retirement of the physical property actually acquired. It held therefore that this amount could not be set up in the Depreciation Reserve as an offset against the excess book balance. The difference between these two figures of $68,735.31, however, could be used for such purpose. The Commission therefore modified the decision originally proposed of charging the whole excess of $161,752.11 to surplus by deducting the sum of $68,735.31 therefrom and directing that the balance of $93,016.80 be charged to surplus.

We cannot say that the decision of the Commission as to this item was arbitrary or without support in the evidence. The Commission had full power to supervise the accounts of petitioner, and moreover the burden of proof was on the latter to establish the correctness of its own accounts, Public Service Law, § 66, Subd. 9. Petitioner's complaint is based largely on the assertion that it complied with all the requirements of the different accounting systems promulgated by the Commission during the period covered, and that it is now being penalized because its passing judgment as to detailed rules of procedure respecting amortization and other aspects of accounting does not now

coincide with the after judgment of the Commission. However the crux of the situation as it appears to us lies in the fact that petitioner created a fictitious surplus of $161,752.11, a surplus that had no real existence in fact, and that out of this inflationary bookkeeping, plus a failure to set up adequate accruals against it, all the difficulties with respect to this item have arisen. A part of this amount has been taken care of by accruals to offset it in the amount of $68,735.31, but the balance of $93,016.80 is still fictitious if viewed in the light of what a surplus should really represent. This balance represents no capital outlay in any real sense and to permit it to remain as a capital asset would provide a distorted picture of petitioner's financial structure. Petitioner apparently recognized this when it changed its proposal to have this balance placed in its Miscellaneous Intangible Account, as a part of its fixed capital, to its last proposal to have it placed in its depreciation reserve. Before permitting it to be placed in the last mentioned account the Commission was justified in requiring clear proof that sufficient accruals to the reserve, directly applicable to this specified amount, and sufficient to offset it had been set up. Petitioner, we believe, failed to sustain its burden of proof in that regard and under the circumstances the decision of the Commission directing that it be charged to surplus was neither arbitrary nor capricious.

[4–6] In 1922 petitioner applied to the Commission for permission to construct a gas transmission line, under the terms of an agreement with the Newfield Company, for the purpose of obtaining an additional supply of gas from the latter. There is evidence that the application was made under pressure from a member of the Commission, and as it turned out the venture was an improvident one, but these facts cannot be held to have any effect on proper accounting methods applicable to the transaction.

Petitioner was to construct the line and hold title thereto until 50 per cent of the cost of construction had been paid by the Newfield Company in the form of rebates on gas purchased, and then title was to be transferred to the Newfield Company. The cost of the line was $64,626.87. The gas supply thus tapped failed in 1925 before title to the line had been transferred. Petitioner salvaged the cost of the line in part, some of the pipe being taken up and used elsewhere, and some being used in place with other lines. Petitioner sustained a loss of $27,324.64, the difference between the cost of construction and the total amount of payments received from the Newfield Company plus the cost of the pipe salvaged. Petitioner charged this loss off by debits to the Retirement Reserve in the years 1930 and 1931.

This charge of the loss to the Retirement Reserve was held by the Commission to be improper on the ground that the entire transaction had nothing whatever to do with such reserve. It was pointed out that no part of the loss could properly have been charged to the reserve if title had been transferred to the Newfield Company under the terms of the agreement. In addition the transaction was not carried as a part of plant accounts but in an account for miscellaneous investments, and hence no accruals were

applicable to the Newfield line. In view of this the Commission has determined that petitioner's proposal to charge the loss to Depreciation Reserve would not constitute proper accounting, and that the loss should be charged to surplus. Viewed as an accounting proposition we cannot say that this determination is unreasonable and not sustained by the evidence in the record. It is suggested that the loss might have been handled in a different manner. Perhaps the line might have been set up as a part of petitioner's depreciable property and accruals made thereon as a part of its operating expenses. Then there would have been accruals in the reserve against which a loss could have been taken. But this was not done, and the transaction must be viewed now as it was actually handled and not from the viewpoint of what might have been done. The reserve for depreciation account is not an odd lot corner to which every loss may be thrown, irrespective of its source, but a reserve set up solely for the purpose of providing for depreciation of a physical plant in public service. Long Beach Gas Co. v. Maltbie (1942) 264 App Div 496, 46 PUR(NS) 393, 36 NY Supp(2d) 194, affirmed (1943) 290 NY 572, 48 NE(2d) 167. It may be said, however, that the charge of this loss against the Surplus Account now does not reduce such account to any greater extent than it would have been reduced if the transaction had been handled as depreciable property or if the loss had been amortized as a part of operating expenses.

[7, 8] In 1926 the Genesee Valley Gas Company acquired all of petitioner's capital stock. T. W. Stemmler was the president of the Genesee Company and he became president of petitioner. He was also president of Stemmler & Company, an engineering and construction company, and one of the companies which controlled the Genesee Valley Gas Company. In October, 1926, petitioner entered into a contract with Stemmler & Company under which the latter agreed to supervise all of petitioner's construction work for a fee of 12½ per cent of the cost of the work. The cost, as defined, included subcontracts, materials, machinery, equipment, labor, lands, or rights of way, and in addition and quite significantly, the salaries of engineers and a superintendent of construction from the Stemmler Company. An artificial gas plant was constructed under this agreement for petitioner some time between 1926 and 1928, and during that period petitioner paid to Stemmler & Company a fee of $50,412.77, which represented 12½ per cent of the cost of the work done on the gas plant, under the provisions of the contract. This fee was included in petitioner's property accounts as a part of the original cost of the plant. The Commission held that such fee, exacted from an affiliated company by Stemmler & Company, which at the time had petitioner under its complete domination and control, required justification, and that since no evidence was offered as to the propriety or reasonableenss of the charge it was manifestly improper to permit same to remain in petitioner's capital accounts. A rather feeble defense to sustain the propriety of the charge was offered on the theory that there was need for engineering services in connection with the construction of the

plant, but the awswer to this argument is that petitioner paid for all engineering services as a part of the cost of the work. In view of the intercompany relations the burden rested on petitioner to establish clearly that the fee was reasonably necessary and proper, and since there is no evidence whatever to sustain it the Commission was clearly justified in refusing to permit the charge to remain as a part of fixed capital, and to direct that it should be charged to surplus. Long Beach Gas Co. v. Maltbie, *supra*.

[9] When the Genesee Valley Gas Company took over control of petitioner in 1926 there was on petitioner's books a Retirement Reserve in the amount of $477,581.59. The new management decided on the basis of its own theoretical computations that $281,421.97 was a sufficient reserve and that the balance of $196,159.62 represented an excess over an adequate reserve, and thereupon it proceeded to transfer the alleged excess from the Retirement Reserve to its Surplus Account. Permission for this transfer was not obtained from the Commission, and the transaction apparently was in violation of the uniform system of accounts then in vogue. Such system then provided: "No portion of the amount reserved for retirement shall be diverted to surplus, or other use made thereof, except as above provided, without the approval of the Commission" (Account 251. Retirement Reserve). The transfer in question was not within the exception in the sentence quoted and hence the permission of the Commission was necessary to properly effectuate it. The same restriction has been carried over to the present system of accounts now required (Account 250. Reserve for Depreciation). The foregoing transfer was discovered in December, 1927, and the company was notified by letter that it violated the system of accounts. Apparently petitioner took no action thereon. It is urged as a defense that the Commission authorized the issuance of securities after it knew of the transfer. We know of no authority, applied to like circumstances, which holds that a grant of authority to issue securities, especially to an affiliate, constitutes a blank certification of the correctness of a utility's capital accounts. The Commission has ordered the company to reverse the transfer and to restore the sum of $196,159.62 to the Depreciation Reserve.

[10] There is no explanation in the record for failure to obtain permission of the Commission before the transfer was made but it is asserted that the reserve as of December, 1926, was in fact in excess of the required amount and that the Commission ought now to give its approval of the transfer as of that date. This, of course, is merely an appeal to the discretion of the Commission and on such an application the order of the Commission will not be interfered with unless there is clear proof that there was an abuse of discretion. We find no such proof in the record. The proof does not reveal that the reserve as of December, 1926, was in fact excessive. Against the $477,581.59 in the Retirement Reserve there were several large amounts which should have been been recorded as of that time. Included among these was the item of $20,302.47 on the physical property acquired from the Pittsburgh Company, the sum of $68,-

735.31 on account of the inflationary element of the Pittsburgh transaction, and some other unrecorded retirements amounting to $119,283.46. If these items were charged against the amount then in the Retirement Reserve the balance would have been less than the sum of $281,421.97, which was the amount arrived at by theoretical computations as an adequate and proper reserve requirement.

In the light of these facts we cannot say on a review of this character that petitioner sustained the burden of establishing that the Depreciation Reserve was excessive at the time of the transfer. Moreover if petitioner's claim is to be treated as an application for approval nunc pro tunc then it also had the burden to establish the adequacy of its Depreciation Reserve as of the date of the Commission's examination. No proof was offered on the latter phase of the matter.

The order and determination of the Commission as to each of the foregoing items should be confirmed with $50 costs.

Order and determination of the Public Service Commission confirmed with $50 costs.

All concur except Hill, PJ., who dissents.

CALIFORNIA RAILROAD COMMISSION

Re Pacific Gas & Electric Company

Decision No. 37696, Application No. 25309
February 27, 1945

APPLICATION *to amend and modify certain provisions of General Order No. 95 governing overhead electric line standards; certain deviations permitted.*

Construction and equipment, § 5 — Overhead electric line standards — Deviations.
Changes, either by deviation or modification, in overhead electric line standards should be permitted when such can be accomplished to the advantage of the industry and its customers, provided that hazards to the workmen and the general public are not increased; every effort should be made to build and maintain overhead electric lines at minimum costs consistent with high service standards.

By the COMMISSION: Pacific Gas and Electric Company (also referred to as Pacific) has heretofore been authorized to deviate in certain respects from the rules of General Order No. 95, such authorization being the subject of Decisions Nos. 36344, May 11, 1943 (44 Cal RCR 684), 36791, Dec. 28, 1943 (45 Cal RCR 135), and 37088, rendered in response to the original and first and second supplemental applications herein, respec-

tively. The third supplemental application herein seeks authority to deviate from certain other rules and in certain other respects above and beyond those deviations heretofore authorized by this Commission.

The specific deviations requested will be considered in the order in which they have been presented in the application.

1. Pacific's 6,600-Volt (Nominal) Circuits

Applicant alleges that General Order No. 95, in general, imposes relatively more stringent construction requirements upon lines whose voltage is less than 7,500 volts than on lines whose voltage is more than 7,500 volts, and deduces that the reason therefore arises from the usual practice of performing operations thereon while the lines are energized. Applicant operates certain overhead lines on its system which are designed and equipped to operate ultimately at 12,000 volts Wye, although these circuits are initially operated at 6,600 volts Delta. Applicant's safety rules for employees, under rules 108 and 308, prohibit "hot work" on circuits of more than 4,500 volts, which would mean that the 6,600-volt circuits would be worked either deënergized or with "live line" tools. Applicant alleges, therefore, that the need for more stringent requirements does not apply to these 6,600-volt circuits, and asks permission to construct said circuits in accordance with the provisions of General Order No. 95, which govern construction for 7,500-volt circuits. Under these circumstances applicant's request appears reasonable and the order will provide for this deviation.

2. Rule 38 (G. O. 95, page 39)—Minimum Clearances of Wires from Other Wires

Applicant quotes Rule 38, Table 2, Case 17, Column D, and alleges that it is at times impossible to comply with the 3-inch clearance specified therein in the case of transformer secondary leads of 0-750 volts under certain connection requirements. It further alleges that this difficulty has been overcome by the use of a porcelain insulator having a dry flashover value of 5,000 volts or more. Applicant seeks to be relieved of the necessity of maintaining this 3-inch clearance and desires permission to use such insulators. The proposed deviation seems reasonable and will be authorized.

3. Rule 38 (G. O. 95, page 39); Rule 56.4-C4, (Page 132); Rule 86.4-C4, (Page 219),—Clearances between Guys Cables

The rules referred to specify that a clearance of 3 inches shall be maintained between guys passing communication conductors supported on the same poles. Applicant alleges that under certain conditions which are frequently met in practice, due to the physical limitation of the construction elements, it is impossible to maintain this specified clearance at all times and under all conditions of service. Applicant seeks permission to be allowed to decrease this clearance under certain conditions, provided that mechanical separation is maintained by the use of a suitable wood separator between the guy and the communication conductors. The Commission is cognizant

of the fact that in certain respects maintenance of the 3-inch clearances is unduly burdensome and deviation from the requirements of the rule, under specified conditions, will be authorized.

4. Rule 52.7-D (G. O. 95, page 90)—Separation from Metal Pins and Dead-end Hardware

Applicant quotes a portion of this rule requiring clearances of not less than 1½ inches between metal pins and dead-end hardware on the one hand and other equipment hardware on the other, and alleges that strict construction of this provision would necessitate the discontinuance of the use of certain apparatus which has long been accepted as standard equipment on overhead lines. As examples of the equipment which would be prohibited, applicant cites pole top, gang operated, disconnect switches in which dead-end insulators are intimately associated with and mechanically attached to the switch base, and which constitute the physical part of the switch mechanism. Applicant seeks relief from this alleged unduly burdensome restriction where the insulator hardware and equipment hardware are associated with the same circuits and are interconnected with a positive electrical contact. The request appears reasonable and will be granted.

5. Rule 53.4-A3 (G. O. 95, page 92)—Bonding—Conductors of More than One Circuit at the Same Lead

Applicant alleges that item 5 of the original Application No. 25309 and Decision No. 36344, *supra* (44 Cal RCR at p. 687), provides for a deviation from Rule 53.4-A2 and that Rule 53.4-A3 is substantially identical with Rule 53.4-A2. Applicant now requests that the same deviation be made applicable to Rule 53.4-A3. The proposed deviation seems reasonable and the order will provide therefor.

6. Rule 53.4-A3a (G.O. 95, page 93)—Bonding of Conductors of More than One Circuit at the Same Level

Applicant states that in its original Application 25309, under item 4, it applied for a deviation from the second sentence of the above rule, which request was denied in Decision No. 36344, *supra* (44 Cal RCR at p. 687), and alleges that in denying the requested deviation the Commission misconstrued the request.[1] The specific provision involved is the second sentence

[1] In connection with such request, the Commission's 1943 decision in 44 Cal RCR at p. 687, stated as follows:

"Pacific correctly construes this rule as precluding work on either of the two circuits of double circuit construction even though both circuits were deënergized, unless the procedural requirements are met. Pacific states further that an error has apparently occurred in the wording of this rule, which we find, in consideration of this request, is not the case. The requested deviation would eliminate the grounding of conductors of a second deënergized circuit on which no work is being performed, which condition would not be desirable. However, the request will be granted in part by authorizing a deviation from the rule by permitting Pacific to omit the requirement that the bond wire of the circuit not being worked on be connected to its related deënergized and grounded conductors, and the order will so provide."

The order in that decision, at p. 693, provided in part as follows:

"The second sentence of Rule 53.4-A3a may be applied as though it read as follows: 'Neither circuit shall be worked on while deënergized unless the deënergized conductors are shortened and securely grounded and the bond wire of the deënergized circuit on which work is being performed is connected to the deënergized and grounded conductors on the pole where such work is done.'"

of the above rule, which is as follows:

"Neither circuit shall be worked on while deënergized unless the deënergized conductors are shorted and securely grounded and the bond wire of the deënergized circuit . . . is connected to the deënergized and grounded conductors on the pole where work is done."

Applicant alleges that in the case of work on parallel circuits where both circuits are deënergized and grounded, a strict construction of the rule would still require the interconnection of the bond wires with the deënergized and grounded conductors. Applicant believes that under these circumstances the interconnection of the bond wires with the grounded conductors is unnecessary and unduly restrictive and seeks permission to be relieved of the necessity of making such interconnection. It is the Commission's opinion that under the circumstances recited above the interconnection of the bond wires to the deënergized and grounded conductors adds nothing to the safety of the operation, provided it is established that no potential difference exists between the deënergized and grounded conductors of the line being worked on and the bond wires associated with that same circuit. The request appears reasonable and the order will provide for a deviation from this rule with certain restrictions.

7. Rule 54.4-D7 (G. O. 95, page 102) —Conductors—Radial Clearance from Center of Pole

Applicant asserts that the requirements of this rule are objectionable and burdensome in requiring the modification of basic radial clearances between the center line of the pole and the conductors of different voltages in certain cases of dead-end construction. The objections raised are:

1. The clearances for dead-end construction exceed the clearances for the same line when not dead ended.

2. Construction in conformity with the General Order will considerably increase the investment.

3. The required construction is more hazardous, particularly with respect to the use of "live line" tools.

4. The required construction will, because of the mechanical arrangement, impair the separation between lines so equipped and lines at a lower level.

5. The use of the alternative construction would necessitate the use of arm guys which likewise would result in increased cost and hazards.

The inclusion of this rule in General Order No. 95 was an attempt to minimize certain hazards which were present in construction permitted by an earlier General Order. The method applied to eliminate these hazards, however, was not exclusive. It is believed that alternative methods of construction can achieve the same result and at the same time be less restrictive than the present requirements. The request for relief from the provisions of this rule appears justified to a limited extent and the order will authorize a deviation therefrom.

8. Rule 54.7-A (G. O. 95, page 112) —Climbing Space

This rule provides in effect that climbing space through a conductor level must be maintained both 4 feet above and 4 feet below the level and that under certain conditions climbing space need only be provided up to the

level of conductors at the top of a pole. Applicant alleges that in those instances where related buckarms are subsequently installed, the requirement that the climbing space be maintained 4 feet above the level of the buckarm and the requirement that the climbing space need not extend through the level of the top conductors, are either inconsistent or would necessitate increasing the separation between the line conductors and the conductors on the related buckarm. It is the Commission's opinion that the conductor level includes both the line conductors and the conductors supported on the related buckarm. Therefore, if the climbing space is maintained up to the horizon of the top conductors, the subsequent installation of a related buckarm would not necessitate provision for climbing space through and above the top horizon of the conductor level. Applicant further seeks permission to deviate from this rule for all conductors of 6,500 volts or more, and thereby seeks to have included in this proposed deviation these nominal 6,600-volt circuits which are the subject of item 1 herein. Under the circumstances outlined above, there would seem to be no need for a deviation to cover this particular provision and under the deviation authorized by item 1 of the order herein 6,600-volt circuits of Pacific will qualify for the application of the rule as here construed.

9. Rule 52.7-D (G. O. 95, page 90); Rule 54.4-D,7 (page 102); Rule 54.7-A4, (page 116)—Climbing Space for Single Circuit, More than 6,500 Volts at Top of the Pole

Applicant refers to the above rules as they affect a single circuit at the top of a pole whose nominal voltage is such that the circuit is only worked on when deënergized and grounded, or with "live line" tools, and asserts that the requirements, if met, occasion increased cost but contribute nothing to operating safety. This assertion is based on the conclusion that with an installation of this type, there is no necessity for the workman to climb to or through, or work at the level of such a pole top circuit while the circuit is energized. The order herein will provide for limited relief from the requirements of these rules.

10. Rule 54.7-A4 (G. O. 95, page 116)—Obstructions in Climbing Space for Circuits of Any Voltage Located below a Circuit at the Top of the Pole

Provisions of this rule do not recognize hardware attached to dead-end insulators as an allowable climbing space obstruction. Applicant alleges that this prohibition constitutes a restriction upon the common practice of attaching dead-end insulators to space bolts in double arm construction where any part of the space bolt extends into the climbing space. Permission is sought to deviate from this rule by

recognizing such space bolts as permissible climbing space obstructions so long as the bolt is placed in the outer ¼ of the long dimension of the climbing space. The use of this type of construction appears warranted from the standpoint of reasonable practice, and the order herein will permit the use of such hardware in the climbing space as long as it is suitably protected so that human contact with the equipment inside the boundaries of the climbing space is unlikely.

11. Rule 54.8-B4b (G. O. 95, page 120)—Clearances from Openings in Residential Buildings

Applicant alleges that the 3-foot clearance specified in a portion of this rule does not clearly apply to conductors (service drops) attached to a building, and further alleges that it has endeavored to apply the 3-foot clearance to all service drops, but finds that such application in some cases is economically impossible, and asks permission to reduce the clearance to a vertical distance of one foot above the plane of any opening where the service drops are attached to the building above the opening. The Commission approves of applicant's position in endeavoring to exclude all conductors from that space enclosed by a surface, all points of which are a distance of 3 feet from any building opening, and is further cognizant of the difficulties which such might entail when attempts are made to apply it without exception to certain types of residential construction. The requested deviation appears not unreasonable and the order herein will provide for mitigation of this difficulty.

12. Rule 58.5-D (G. O. 95, page 156); Rule 54.7-A4—Clearance of Switches from Center Line of Pole

Applicant cites portions of the above rules and infers therefrom that the rules prohibit the use of certain equipment heretofore adopted as standard apparatus in the construction of applicant's overhead lines. As specific examples it cites the installation of gang operated air-disconnect and fuse assemblies which, when installed in accordance with accepted past practice, violate these rules when strictly construed. The Commission recognizes the difficulties outlined by applicant, and is of the opinion that no useful purpose would be served by denying applicant the right to use the equipment mentioned. The requested deviation appears reasonable and the order herein will provide relief.

13. Rule 103.1A (G. O. 95, page 244); Rule 113.1A (page 249)—Conductor Splices

Applicant requests that splices made in accordance with specifications shown on their Drawing No. 022487 (Exhibit N of this third supplemental application) be found by the Commission to be an accepted standard method of splicing as contemplated in the above rules, in which event they would then be permissible for use in overhead spans crossing railroads and major communication lines.[2] In support of

[2] The second paragraph of each of the rules mentioned reads as follows:

"The provisions of this rule shall not apply to conductor splices which are made by any accepted standard method which has been proved by test before the Railroad Commission to develop practically the full strength of the conductor in which the splice is made."

the request applicant submits a tabulation of the results of certain tensile strength tests heretofore performed in the presence of members of the Commission's staff.

Splicing methods which applicant seeks to have declared as standard methods are of two kinds; the "Nicopress" method is of the compression type wherein the two ends of the conductor to be joined are inserted in a splicing tube with coincident axes and the tube is deformed by compression with the use of suitable tools, proper performance being supervised with the use of gauges. The twisted sleeve splices consist of the manual twisting of a suitable tube into which the ends of the conductors to be joined are inserted and overlapped and the axes of which are not coincident. Efficiency of the splice in this latter case is more dependent upon human manipulation and no mechanical means are available to assure definitely if the resulting splice conforms to the required specifications. The applicant proposes to use the Nicopress splice on copper conductors ranging in size from No. 8 to No. 2 copper, and for comparable sizes of wire of other materials. It likewise proposes to use the twisted sleeve splice on stranded copper conductors in sizes from No. 4 to No. 0000. It is the Commission's opinion that the use of the Nicopress splice as an accepted standard method of splicing is justified, provided that the splices are made to meet the proposed specifications and certain safeguards are established to insure that the specifications are actually equalled in practice. In spite of the test results obtained with twisted sleeve splices, the Commission is of the opinion that because of the great dependability of the efficiency of the splice on performance of the maker of the splice, and because of the structural details of the splice itself, the showing, so far, is insufficient to permit the Commission to accept the twisted sleeve method as an approved standard method for use in crossing spans over railroads or major communication lines. Further demonstrations of the reliability of the splice under adverse conditions of manual performance, vibration and corrosive atmosphere would seem to be desirable. Permission to use the twisted sleeve splice as an approved standard method will be denied without prejudice.

The Commission is in sympathy with changes, either by deviation or modification, in the overhead electric line standards when such can be accomplished to the advantage of the industry and its customers provided that hazards to the workmen and to the general public are not increased. Every effort should be made to build and maintain overhead electric lines at minimum costs consistent with the high service standards required in this state.

It is found that those certain deviations from General Order No. 95 hereinafter authorized are reasonable under the conditions specified. The Commission desires, however, to emphasize the close relationship between the minimum standards of performance as provided in General Order No. 95 and Pacific's own rules governing its workmen on overhead electric lines. It is clear that certain relaxations in the General Order are being permitted on the basis that certain standards of working performance will

be realized. Accordingly, it is strictly the obligation of the utility to see that such working performances are maintained and carried out.

ORDER

The Commission having considered the above application and being of the opinion that a public hearing is unnecessary, and good cause appearing,

It is hereby *ordered* that the Pacific Gas and Electric Company be, and it is hereby authorized, to deviate from the provisions of General Order No. 95 in the following particulars and under the conditions hereinafter specified.

1. Pacific's 6,600-Volt (Nominal) Circuits

Those 6,600-volt circuits which are designed, constructed, operated, and maintained as if they were in fact circuits of 7,500 volts or more, may be classified as circuits of more than 7,500 volts, and all provisions of General Order No. 95 and all deviations heretofore and concurrently authorized, and pertaining to lines of 7,500 volts or more, shall apply to and govern the design, construction, operation, and maintenance of Pacific's 6,600-volt (nominal) circuits, provided that such circuits shall in fact be operated and maintained as circuits of more than 7,500 volts, and that in no event shall any work be performed on such circuits unless the circuits are deënergized and grounded, or is energized with approved "live line" tools.

2. Rule 38 (G. O. 95, page 39)—Minimum Clearances of Wires from Other Wires

In cases where it is impractical to maintain the required clearances of 3 inches between 0-750-volt lead wires to transformers, porcelain insulators having a dry flashover value of 5,000 volts or more, may be used to separate said lead wires in lieu of maintaining said 3 inch clearances.

3. Rule 38 (G. O. 95, page 39); Rule 56.4-C4, (page 132); Rule 86.4-C4, (page 219);—Clearances between Guys and Communication Cables

Clearances between anchor guys and communication conductors other than open wire conductors may be less than 3 inches, provided that mechanical separation is maintained with a suitable nonconducting separator installed on the guy or the communication conductor which has an insulation value equal to the insulation of the highest voltage line attached to the guyed structure, that the relative point of crossing is positively maintained, and that all other pertinent requirements of the General Order with respect to guys are complied with.

4. Rule 52.7-D (G. O. 95, page 90)—Separation from Metal Pins and Dead-end Hardware

Bolts and hardware of line equipment and bolts and hardware of insulators, all of which are associated with the same circuit, and on the same crossarm, may be metallically interconnected provided a positive electrical contact is made.

5. Rule 53.4-A3 (G. O. 95, page 92)—Bonding—Conductors of More than One Circuit at the Same Level

Bond wires that extend from the underside of one arm to the companion arm of a double arm shall be exempt.

from the required protective covering specified by this rule provided such wires are substantially perpendicular to the arms, extend directly between the arms, and are not less than 30 inches from the center of the pole.

6. Rule 53.4-A3a (G. O. 95, page 93) —Bonding of Conductors of More than One Circuit at the Same Level

Rule 53.4-A3a may be applied as though the following sentence was a part of such rule:

"In the event both circuits are deënergized, shorted and securely grounded, the bond wires of either circuit need not be connected to the deënergized and grounded conductors, provided that before work is done the bond wires are tested for and drained of any potential difference between themselves and the deënergized and grounded conductors."

7. Rule 54.4-D7 (G. O. 95, page 102) —Conductors—Radial Clearance from Center of Pole

Rule 54.4-D7a may be applied as though it contained the following additional provision:

"The clearance of 20 inches or 30 inches referred to above may be reduced to 15 inches in the event the crossarm concerned is supporting only one circuit and that circuit is in the top position on the pole, and further, that no part of any conductor of the circuit concerned is closer than 15 inches to any of the boundaries of the climbing space. The exceptions to clearances shown on Table 2 shall not be applicable to poles on which the foregoing construction is used."

Rule 54.4-D7b may be applied as though it contained the following additional provision:

"The clearance of 24 inches and 36 inches referred to above may be reduced to 18 inches in the event the crossarm concerned is supporting only one circuit, and that no part of any conductor of the circuit concerned is closer than 18 inches to any of the boundaries of the climbing space. Transformers and cutouts may be connected to such circuit when that circuit is in the top position on the pole. The exceptions to clearances shown on Table 2 shall not be applicable to poles on which the foregoing construction is used."

9. Rule 52.7-D (G. O. 95, page 90); Rule 54.4-D7, (page 102); Rule 54.7-A4, (page 116)—Climbing Space for Single Circuit, More than 6,500 Volts at Top of the Pole

Rule 52.7-D need not be applied to through bolts and dead-end hardware of a single circuit of more than 7,500 volts constructed at the top of a pole in any configuration. A related buckarm and equipment installed thereon may be considered elements of said circuits, provided that all other applicable clearance rules of the General Order are complied with, that through bolts and dead-end hardware are metallically interconnected so that a positive electrical contact is established, and that any portion of such through bolts on the related buckarm which are in the climbing space shall be covered with a suitable nonconducting shield or cover, having an insulation value equal to the insulation value of insulators on the associated circuit. No part of any guy may be nearer than

1½ inches to any through bolt which is metallically interconnected to dead-end hardware.

Rule 54.4-D7 shall be applied in conformity with the deviation and interpretation heretofore granted under subdivision 7 of this Third Supplemental Application.

Rule 54.7-A4 shall be applied in accordance with the deviation and interpretation discussed in this section under Rule 52.7-D.

10. Rule 54.7.A4 (G. O. 95, page 116) —Obstructions in Climbing Space for Circuits of Any Voltage Located below a Circuit at the Top of the Pole

Space bolts used for the attachment of dead-end hardware to crossarms supporting circuits of any voltage located below a circuit at the top of the pole may project into the climbing space, provided they are protected with a suitable nonconducting shield or cover having an insulating value equal to the insulating value of the insulators on the associated circuit, and provided further that the area of the climbing space on any horizontal plane is not reduced by more than 10 per cent by reason of the installation of such insulating covers.

11. Rule 54.8-B4b (G. O. 95, page 120)—Clearance from Openings in Residential Buildings

Applicant may deviate from the requirements of Rule 54.8-B4b to the following extent:

Service drops shall be so installed that they clear all points on the surfaces which form the boundary lines of exits, windows, doors, and other openings at which human contact might be expected by 3 feet radially, except that in the case of service drops located above the horizontal plane through the top extremity of such opening, the maximum practical radial clearance must be maintained, but in no event shall it be less than one foot.

12. Rule 58.5-D (G. O. 95, page 156); Rule 54.7-A4—Clearance of Switches from Center Line of Pole

Rule 58.5-D may be applied as though it read as follows:

"Switches and cutouts shall be so located that when in either open or closed positions all energized parts thereof are not less than 15 or 18 inches from the center line of pole as required by Table 1, Case 8, and no part of such equipment shall be in the climbing space. Such apparatus is permitted to be wholly or in part within the working space. Nonfusible pole top switches connected to lines installed as provided in Rule 54.4-D8b are not subject to the above clearance limitation provided the switches are installed substantially in the same vertical plane as the conductors to which they are attached."

13. Rule 103.1A (G. O. 95, page 244); Rule 113.1A, (page 249)—Conductor Splices

"Nicopress" splices made in conformity with Pacific's Drawing No. 022487, dated August 15, 1944, are hereby declared an approved method of splicing as contemplated in Rules 103.-1A and 113.1A. In using the splice under the provisions of Rules 103.1A and 113.1A, Pacific shall devise a method of control to be used in the application of this construction which

will provide assurance that the specifications called for are complied with, that responsibility for proper installation is fixed and that the individual performance of any such splice may be readily determined. When Pacific shall have determined such procedures the Commission shall be fully advised of the details thereof.

In all other respects Application No. 25309, Third Supplemental Application, is hereby denied.

This order shall become effective on the twentieth day after the date hereof.

KANSAS CITY (MISSOURI) COURT OF APPEALS

Peoples Telephone Exchange

v.

Public Service Commission et al.

No. 20514
— Mo App —, 186 SW(2d) 531
March 5, 1945

APPEAL *from Circuit Court judgment reversing Commission order denying certificate of convenience and necessity for operation of telephone system; reversed and remanded with directions to affirm order. For Commission decision, see (1943) 51 PUR(NS) 6.*

Appeal and review, § 33 — Scope of review — Trial de novo.

1. The court does not try a case on review of an order of the Commission de novo in the ordinary sense of that term, and it cannot modify the Commission's finding nor make one of its own, but the court's authority is limited to an affirmance or a reversal of the order, p. 230.

Appeal and review, § 34 — Burden of proof — Commission decision.

2. Orders of the Commission are prima facie lawful and reasonable until found otherwise in a suit brought for that purpose, and the burden of proof is upon the party seeking to set aside such an order to show by clear and satisfactory evidence that the order is unreasonable or unlawful, p. 230.

Monopoly and competition, § 83 — Successor of mutual telephone association.

3. A corporate successor to a mutual telephone association organized and operated over a long period of years by a group of farmers should not be granted a certificate of public convenience and necessity to operate as a regulated utility in territory adequately served by a regulated telephone company, p. 231.

Monopoly and competition, § 50 — Grounds for authorizing — Desire for other facilities.

4. Public convenience and necessity is not proven merely by the desire for

other facilities, but it must be clearly shown that there is failure, breakdown, incompleteness, or inadequacy in the existing regulated facilities in order to prove the public convenience and necessity requiring the issuance of another certificate, p. 231.

Certificates of convenience and necessity, § 26 — When required — Corporate successor to mutual association.

5. A corporate successor to a mutual telephone association which was not subject to regulation under the Public Service Commission Law must obtain a certificate of convenience and necessity in order to operate as a public utility, although the mutual association was in existence prior to the date of the regulatory law, p. 233.

Monopoly and competition, § 41 — Burden of proof — Successor to mutual company.

6. A corporate successor to a mutual telephone association must, upon acquiring the property of the association, prove that there exists a public necessity for the service which it proposes to furnish as a regulated public utility, and it must prove that the service of an existing regulated utility is not reasonably adequate and satisfactory, p. 233.

Monopoly and competition, § 89 — Telephone companies — Long-distance connection — Availability.

7. A corporate successor to a mutual telephone association should not be authorized to operate as a public utility in an area served by a regulated public utility because subscribers of the mutual organization are unable to secure long-distance connections, where long-distance service is available on conditions approved by the Commission from an existing public utility company, p. 235.

Certificates of convenience and necessity, § 4 — Constitutional rights — Successor to mutual association.

8. Denial of a certificate of convenience and necessity to a corporate successor of a mutual telephone association to operate as a public utility does not unconstitutionally deprive it of valuable property without just compensation, p. 235.

Monopoly and competition, § 33 — Mutual and regulated organizations.

9. Denial of a certificate of convenience and necessity for public utility operation by a corporate successor to a mutual telephone association in an area served by a regulated telephone company is not unlawful on the theory that it eliminates lawful competition established in the area, since the association and the telephone company were not in competition as public utilities, p. 235.

APPEARANCES: John P. Randolph, of St. Joseph, and Lester G. Seacat, of Jefferson City, for appellant Public Service Commission; R. W. Hedrick, of Jefferson City, and Ellis G. Cook, of Maryville, for appellant Hanamo Telephone Co.; Emmett Bertram, of Maryville, Gregory Stockard, of Jefferson City, and C. B. DuBois, of Grant City, for respondent.

CAVE, J.: This is an appeal by the Public Service Commission and the Hanamo Telephone Company, a corporation, of Maryville, Missouri, from a judgment of the circuit court of Daviess county, reversing an order of

the Commission refusing to grant a certificate of convenience and necessity to the respondent, the Peoples Telephone Exchange, a corporation, for the operation of its telephone system in Maryville and vicinity.

The case was instituted by the Peoples Telephone Exchange first filing an application asking the Public Service Commission to assume jurisdiction of applicant because it " . . . proposes in the future to furnish telephone service for a consideration to the public." Thereafter, it filed an amended application in proper form asking the Commission to " . . . issue an order granting to it a certificate of convenience and necessity to operate for the use of the public for a consideration its telephone system and properties." The Hanamo Company, a Missouri corporation engaged in the telephone business at Maryville as a public utility, filed a motion to intervene in the proceedings before the Commission, which motion was allowed, and it filed its written protest.

A hearing was had and the matter taken under advisement. Thereafter, the Commission issued its report and order, by a majority vote of three to two, in which it denied the application for a certificate of convenience and necessity. (51 PUR(NS) 6.) The Peoples Telephone Exchange prosecuted a certiorari proceedings in the circuit court of Nodaway county and, on application for change of venue, the cause was transferred to Daviess county, where it was submitted to the court on the record and evidence before the Commission. The court found that the action of the Commission was *unlawful* and *unreasonable* and reversed and remanded the cause for further action by the Commission. From this judgment the Commission and the Hanamo Company appeal.

Appellants charge the trial court erred in holding that the action of the Commission was unreasonable and unlawful for certain reasons which will be discussed. The respondent takes a contrary view and assigns certain reasons in support of the court's action.

The majority report and order denying the application was concurred in by three members of the Commission; a dissenting report was filed and concurred in by the other two members, holding that the application should be granted.

The evidence discloses that the Hanamo Company was incorporated in 1897 for the purpose of providing telephone service for the people of Maryville and vicinity, and had been in continuous operation since that time. When the Public Service Commission law was enacted in 1913 the Hanamo Company, as a telephone company within the meaning of the act, came under regulation of the Commission by operation of that law, and has complied with all rules, regulations, and requirements of the Commission and kept on file with the Commission its rates, schedules, tariffs, and such other information and data as required. During all the years it has offered two types of rural service; one contemplates that the subscribers living beyond the city limits of Maryville will furnish and maintain the physical facilities to a connection with its lines at the city limits; the other *rural* service contemplates that the company will install, own and maintain the lines and equipment used in such service. The only restriction is there must be a minimum

of five and a maximum of ten on each rural line. The charges depend upon which service the subscribers select. The plans offered for rural service are in the manner and form as generally adopted by the telephone industry and as approved by the Missouri Public Service Commission. The Hanamo Company denies it has ever refused to render such service pursuant to its approved rules and regulations. It has about 980 subscribers in the city of Maryville and less than 25 rural subscribers. Its president, and principal owner, estimated the value of its property at approximately $120,000 and its gross income for 1941 slightly in excess of $38,000. The rates charged by the company have been approved by the Commission and we deem it unnecessary to set them out. So much for a general outline of the status of the Hanamo Company.

What of respondent, the Peoples Telephone Exchange? The record discloses that in about 1901 a number of farmers of Nodaway county agreed to construct a telephone line into Maryville for their personal use. Before this line was completed some 8 or ten other similar mutual organizations agreed to construct lines from their neighborhoods into Maryville, which was done. They undertook to get telephone connections with the Hanamo Company but could not agree on the charges to be paid, so the mutual lines installed their own switchboard. The system continued to expand until 1941, at which time it had fifty-eight rural lines coming into its central office in Maryville. There were 370 *rural* subscribers and about 700 subscribers within the city of Maryville; about 250 of these were business phones and the remainder were in residences. These various mutual telephone lines formed some sort of a central governing body and adopted the name *Peoples Telephone Union*. It operated as a mutual company from its inception until 1941, at which time it was incorporated under the general corporation code, Art 5, Chap 83, as *Peoples Telephone Exchange*. The members of the mutual company assigned all their interest and title in and to the lines, instruments, equipment, etc., to the new corporation and received stock of said corporation in exchange therefor. After applicant was incorporated it purchased a new switchboard, costing approximately $12,000, and having twenty circuits with capacity to accommodate about 2,000 lines. It owns approximately 160 miles of poles, 250 miles of underground wire, 300 miles of overhead wire, 61,750 feet of cable and 82 miles of commercial wire, connecting its switchboard in Maryville with certain mutual exchanges in other towns in that vicinity. Its investment is approximately $55,000 and its gross income for 1941 was slightly in excess of $19,000. Its *rural subscribers* have no telephone service except that furnished by applicant. There is no connection between applicant's telephone system and the Hanamo system, consequently some 300 or 400 of applicant's subscribers have had installed a telephone with each company. Applicant has no long-distance service and if a long-distance call is placed for one of applicant's subscribers who does not also have a Hanamo telephone, a messenger must be sent or word gotten to the subscriber by some method who must then go to a telephone owned by

the Hanamo Company in order to receive the long-distance call. Applicant's witnesses testified that the only deficiency in its telephone service *was the lack of long-distance connections.*

In addition to applicant's own system, it has a working agreement with other mutual telephone organizations in Nodaway and adjoining counties for free service through the various exchanges.

The service rendered by the Mutual Company *to its subscribers* has always been reasonably satisfactory, and has improved since it incorporated and purchased the new switchboard. So far as this record discloses the service rendered by the Hanamo Company *to its subscribers* has been and is satisfactory. In other words, both companies are rendering reasonable service to *its subscribers,* but no provision is made or agreement reached to give the subscribers of one company the right and privilege of using the telephone system of the other, either for local or long-distance calls. Therefore, the principal complaint is that the Hanamo Company would not make connections with the Mutual Company or the present corporation, thereby giving to its subscribers the benefit of long-distance service and, also, the privilege of telephoning any subscriber of the Hanamo Company. For this reason it is charged the Hanamo Company was not and is not rendering proper, adequate, and sufficient service for the citizens of Maryville and Nodaway county.

It is clear from the record that in the early days of the rural telephone, the Mutual Company very largely organized and served the rural demands of Nodaway county, and that the Hanamo Company rendered very little, if any, service to such subscribers. It is intimated the management of Hanamo had never made much effort to secure rural subscribers; but it is also evident that the rural subscribers did not seek the services of the Hanamo Company but preferred their mutual system. Prior to the hearing before the Commission an effort was made to reach an agreement between the conflicting interests for consolidation or sale of the properties, but nothing was accomplished.

[1, 2] The question presented is whether the order and report of the Commission, as expressed by the majority, is, under the evidence, reasonable and lawful. Since the decision of the supreme court in State ex rel. Chicago Great Western R. Co. v. Public Service Commission (1932) 330 Mo 729, 51 SW(2d) 73, the circuit court nor the appellate court tries de novo a case on review of an order of the Commission in the ordinary sense of that term. Neither court can modify the Commission's finding nor make one of its own; the court's authority is limited to an affirmance or a reversal of the order of the Commission. The orders of the Commission are prima facie lawful and reasonable until found otherwise in a suit brought for that purpose; and the burden of proof is upon the party seeking to set aside such an order to show by clear and satisfactory evidence that the order is unreasonable or unlawful. Sections 5702, 5703, Rev Stats Mo 1939, Mo Rev Stats Anno; State ex rel. Kansas City Power & Light Co. v. Public Service Commission (1934) 335 Mo 1248, 8 PUR(NS) 192, 76 SW(2d) 343, 350.

[3, 4] The fundamental and underlying question in this case is whether there is a public necessity for another public utility telephone system in Nodaway county? In its brief applicant states " . . . it is a continuation of the prior Mutual Company, . . . that one of the main purposes in getting a certificate of convenience and necessity is to be able to eventually demand and obtain long distance service for its customers." The evidence is that the Hanamo Company, as such, does not have any long distance lines or service, but renders that service to its subscribers under a contract it has with Southwestern Bell Telephone Company, which has long-distance lines or service into Maryville. The terms of that contract are not shown in the record and were not required to be produced by the Commission.

So long as applicant remained a *mutual company* it was not subject to the control and supervision of the Public Service Commission; and neither it, nor the Commission, could *compel* a physical connection with the Hanamo system. State ex rel. Buffum Teleph. Co. v. Public Service Commission, 272 Mo 627, PUR1918C 158, 199 SW 962, LRA1918C 820; State ex rel. Lohman & Farmers' Mut. Teleph. Co. v. Brown, 323 Mo 818, PUR1930A 160, 19 SW(2d) 1048; (1924) 14 Mo PSCR 231 and 244, PUR1924B 218, PUR1924E 206. However, any one of its rural lines, having not less than five nor more than ten subscribers, could secure connections with the Hanamo Company under the terms and schedules filed with and approved by the Public Service Commission. The president of the Hanamo Company testified that it had always been ready, willing, and able to render such service under such conditions, but that his company would not permit, and was not required to permit, the united lines of the Mutual Company or of the applicant to connect with the Hanamo Company, because it would be confiscatory of the Hanamo property for the reason that the Mutual Company and the applicant charged less for their telephone service than did the Hanamo Company.

In deciding the questions presented the majority report of the Commission so clearly states the issues and conclusions to be drawn that we set out the pertinent part thereof:

"The Peoples Telephone Exchange does not show that the Hanamo Company is furnishing any telephone service that its members do not now have with the exception of long-distance telephone service which the Hanamo Company has with the Southwestern Bell Telephone Company. *Its members can of course secure that service by coming to the office of the Hanamo Company or requesting telephone service of the Hanamo Company, which service would afford toll service.*

"Neither does the Peoples Telephone Exchange show that its subscribers or members will have any different service other than that they are now getting should a certificate of convenience and necessity be granted to it. So as we see it there can only be two motives on the part of the Peoples Telephone Exchange for a certificate of convenience and necessity. One being to operate as a regulated public utility for hire. That would be a duplication of the facilities and service now

rendered, of course, by the Hanamo Company. The other motive would be that by securing a certificate of convenience and necessity the applicant has in mind that it could secure a toll connection either by an interconection between its switchboard and the switchboard of the Hanamo Company or by a toll connection direct with the lines of the Southwestern Bell Telephone Company. That would not make available any service that is not now afforded in the city of Maryville under present conditions. Granting the applicant the desired authority would therefore only result in destructive competition between two systems from which one would ultimately emerge as the survivor to the great loss to the other and in the meantime the public would be put to the continued necessity of patronizing the two systems as it has done in the past. . . .

"The Commission realizes that the law does not vouchsafe a monopoly to the system which is already in the field, and it would not hesitate to favor the granting of identical authority to another to enter the same area if the application alleged and the proof should be that the one which had preëmpted the area should be unduly, unavoidably and persistently remiss or derelict in discharging the trust which it holds to afford the utility service. We cannot now after years of diligent regulation permit a company, which through its predecessor, mutual company, by the expediency of unregulated service, by its own method of operation and lesser rates, build itself to important size, and then come before the Commission and urge public convenience and necessity to the detriment and damage of the regulated utility, which down the path of years has been regulated and supervised under the Public Service Law and its property dedicated to public use, without showing that the public utility in the field has failed in the discharge of its duty as above outlined. Therefore applicant's position is not strengthened by the fact that it is merely a continuation of a mutual coöperative system which has occupied the identical area since 1902 because the Public Service Commission law has conferred no 'grandfather rights' upon mutual coöperative telephones existing when the law was passed and operating not for hire but for the free interchange of service with its members and other like systems as did applicant's predecessor. Such systems are entirely omitted from their regulation of this Commission whether organized and existing before or after the effective date of said law. Regulation is primarily in the interest of the public but to preserve and extend this boon to the people the utility so regulated must receive just and equitable treatment. The law operates for all, the public and the utility.

"This Commission would be derelict in its duty if it did not follow the law and afford to such a company this right properly due it, and in this particular case it is so plainly evident that the two companies cannot survive as regulated utilities, for the result would be destructive competition and economic waste. Duplication of service would create a telephone burden upon the general public in the areas herein disclosed. The Commission is, of course, eager to afford to all of the areas adjacent to Maryville ample and complete telephone facilities. It is unthinkable that in this modern age of

science and development anyone should not have available complete telephone service. Yet, when this lack of service is due to the election of subscribers themselves and not to any failure of the regulated utility, we cannot in good conscience permit these subscribers to obtain the service they desire by a method which would destroy an existing regulated company capable of rendering the desired service. This service the people desire is now available and has been since the promulgation of the Public Service Commission law in 1913. . . . As we have heretofore stated the service desired by the former members of the Peoples Telephone Union, who are now stockholders of the applicant, is now available by the protestant and the entire power of the state of Missouri is behind this Commission to enforce the obtaining of this service from the Hanamo Telephone Company to anyone desiring it. A careful study of the records of the telephone department of this Commission fails to disclose any complaint from a single subscriber to the effect that the Hanamo Company has refused or failed to comply with its rates, rules, and regulations as filed with this Commission, and when filed with this Commission act as the law.

"Public convenience and necessity is not proven merely by the desire for other facilities. It must be clearly shown there is failure, breakdown, incompleteness, or inadequacy in the existing regulated facilities in order to prove the public convenience and necessity requiring the issuance of another certificate. The fact that one does not desire to use present available service does not warrant placing in the field a competing utility. This could be a continuing process and a continuing destruction of all regulated utilities and regulation. Public convenience and necessity requires the availability of service and when that exists and is complete and reasonable and pursuant to law, the regulatory body has a duty to preserve it for public use.

"The remedy for the lack of service as described in the application and record herein lies in the hands of the people owning this applicant company. There is nothing to prevent the applicant from reverting to the same status as its predecessor and carrying on a mutual system at low cost to reach the rural areas surrounding Maryville or for these same people owning their own lines to elect to receive service from the protestant, Hanamo Telephone Company, in the manner as provided for in the rules and regulations as filed with the Public Service Commission by the said Hanamo Telephone Company. To refuse to sustain this application we take nothing from the applicant which it now possesses. . . . " (51 PUR(NS) at pp. 10, 11, 13–15.)

We are of the opinion that the report and order of the majority of the Commission is supported by substantial evidence and, under all the facts and circumstances, is reasonable and lawful. We need not lengthen the opinion by enlarging or further commenting upon the reasons assigned in the majority report.

[5, 6] The minority report is based upon two theories. The first is that the Commission has no jurisdiction *to grant or deny* a certificate to the applicant because: "The applicant lawfully derived its title to the telephone prop-

erties which it now operates and proposes to operate in the future from an ownership which could lawfully operate those properties without proof of convenience and necessity and the statute makes no provision for the issuance by us of such a certificate under these circumstances, it follows that the applicant should be free to operate its property as a telephone utility without a certificate of convenience and necessity so long as it conforms to and abides by laws, rules and regulations in such case made and provided." (51 PUR(NS) at p. 25.) This conclusion is based on a construction of § 5673 on the theory that any telephone company which was in operation prior to the passage of the Public Service Commission Law in 1913 was not required to apply for and receive a certificate of convenience and necessity, and since the Mutual Association was in existence prior to that date, it had certain rights as well as properties which it could lawfully sell to the applicant. The fallacy of that reasoning is that the Mutual Association was not subject to the act, acquired no rights under it and, therefore, had nothing to sell but its physical properties. By the purchase, or conversion to a corporation, the applicant acquired no more than what the Mutual Company had a right to sell, and when the applicant desired, and undertook, to extend its activities and services into the field of a public utility, it must prove that there existed a public necessity for such service in the area it proposed to serve; and since that area was already being served by a public telephone utility, it was necessary for applicant to prove that the service of that utility was not reasonably adequate and satisfactory. We think it failed to meet these requirements.

The mere conversion from a *Mutual Association* to a *corporation* is of no great importance. The thing of importance is a conversion from a *purely mutual company or association* to a corporation or association offering *telephone service to the public for hire*. Section 5578, subsection 17, Rev Stats Mo 1939, Mo Rev Stats Anno. In the Lohman Case, *supra*, the supreme court held that whether a mutual telephone company is a public utility, and therefore subject to the jurisdiction of the Commission, "is to be determined from what it does." (323 Mo at p. 820, PUR 1930A at p. 162). It is conceded that applicant's predecessor had always operated as a mutual company until the conversion to a corporation, therefore we need not discuss or decide whether it was a mutual organization.

It is true § 5673 provides that "no . . . telephone corporation hereafter formed shall begin construction of its . . . telephone line without first [obtaining] the permission and approval of the Commission and its certificate of public convenience and necessity, . . . " but subsection 17, of § 5578, *supra*, defines what is included in the term "telephone corporation" and states that it includes " . . . every corporation, company, association, joint stock company or association, partnership, and person, . . . owning, operating, controlling or managing any telephone line or part of telephone line used in the conduct of the business of affording telephonic communication *for hire*." (Italics ours). Therefore, so long as the applicant or

its predecessor conducted its business for its subscribers alone, it was not subject to the jurisdiction of the Commission, and acquired no vested rights under that law; but when it declared its purpose " . . . to operate for the use of the public for a consideration . . . " (51 PUR(NS) at p. 19), it became or sought to become a public utility, subject to the jurisdiction of the Commission, and must secure a permit of convenience and necessity if it continues as such.

[7] The second reason assigned by the minority report is that the subscribers of applicant do not now have, and have been unable to secure, long-distance connections; and that this is one of the main purposes of applicant in obtaining its certificate of convenience and necessity. The report holds that "to deny the application would deprive these subscribers of a very essential and necessary telephone service unless they elected to obtain service according to protestant's schedules on file with the Commission." If protestant's schedules on file with the Commission are unfair and unreasonable, then the Commission should exercise its very great powers and authority, under Art 5, Chap 35, to correct such a situation. But it also follows that if such service is available on fair and reasonable conditions which have been approved by the Commission, then there is no public necessity for another telephone utility in that area.

[8] Applicant also urges that if a certificate of convenience and necessity is denied it will result in depriving it of valuable property without just compensation, in violation of Art II, § 30 of the Constitution of Missouri, Mo Rev Stats Anno and § 1, Amendment 14, Constitution of the United States. This contention is based on the argument that the Mutual Company owned certain property which it had a lawful right to sell and that applicant had a lawful right to purchase, and that when it purchased such properties it had a right to continue to operate that which had been lawfully acquired. No one questions the right of the *Mutual Company* to sell its property to the applicant without the approval of the Commission (because it was not subject to the Commission law), and the right of the purchaser (applicant) to purchase it and to continue to operate the properties as theretofore operated. But the issue before the Commission and before the circuit court and this court is whether the applicant is entitled to abandon the former operation of the property and enter into a new field of service as a *public utility*. As heretofore pointed out, the denial of the application takes nothing from the applicant which it secured by the purchase.

[9] Applicant admits that the Commission can prevent the spread of competition by denying certificates to new enterprises, but argues that it has no authority or procedure whereby it can lawfully eliminate lawful competition which has become lawfully established in an area. That is the express holding of the supreme court in State ex rel. Sikeston v. Public Service Commission (1935) 336 Mo 985, 8 PUR (NS) 452, 82 SW(2d) 105. In that case the city had voted bonds to construct, and had constructed, a municipal light plant which was being operated in competition with a public utility rendering the same service.

The city sought to have the Commission revoke the license of the public utility because there was no further need for its services. The court held that the Commission had no such authority. The Commission nor the court was considering or deciding the question of whether a certificate of convenience and necessity should be issued to a new and competing *public utility*. The city of Sikeston was in the same position as the Mutual Company is in this case in that neither was subject to the jurisdiction and control of the Commission and, therefore, required no authority from the Commission to begin or to continue to operate. They were not in competition *as public utilities*. In deciding that case the court reviews the authorities and announces certain general purposes of our Commission law, and we quote parts which are particularly applicable to the issues presented here, 8 PUR(NS) at p. 459, 82 SW(2d) at p. 110:

"The Public Service Commission Law was intended to prevent overcrowding of the field in any city or area and thus 'restrain cut-throat competition upon the theory that it is destructive, and that the ultimate result is that the public must pay for that destruction.' State ex rel. Union Electric Light & P. Co. v. Public Service Commission (1933) 333 Mo 426, 1 PUR(NS) 38, 43, 62 SW(2d) 742, 745. To accomplish this the Commission was given the authority to pass upon the question of the public necessity and convenience for any new or additional company to begin business anywhere in the state, or for an established company to enter new territory. To secure to the public all advantages to be gained from competition in obtaining fair rates and good service and also to protect them from its disadvantages, the Commission was given authority to regulate rates, to investigate complaints about service, to compel companies to adequately serve all persons and industries in the territory in which they operate, to order improvements and safety equipment, and to authorize the abandonment or extension of lines and the financing of all improvements or purchases. *The question of whether regulated monopoly or regulated competition will best serve the public convenience and necessity in a particular area at any time is for the Commission to decide, subject to the qualification that the Commission must not act arbitrarily or unreasonably, which matter is reserved to be passed upon by the courts.* State ex rel. Electric Co. v. Atkinson, 275 Mo 325, PUR1919A 343, 204 SW 897." (Italics ours.)

We conclude the Commission did not act arbitrarily or unreasonably in denying the certificate.

It follows that the judgment of the circuit court must be reversed and the cause remanded with directions to affirm the majority report and order of the Commission. It is so *ordered*.

All concur.

MISSOURI PUBLIC SERVICE COMMISSION

Re City of Springfield

Case No. 10614
March 19, 1945

APPLICATION *of municipality for order authorizing it, immediately upon acquisition of common stock of public utility company, to cause corporation to be dissolved and liquidated and its net assets and properties to be transferred to municipality as holder of common stock, and permitting corporation to cease operation as a public utility; granted subject to condition as to paying preferred stockholders.*

Corporations, § 18 — Vote on property sale — Preferred stockholders — Absence of dividend default.

1. Preferred stockholders who are given the charter right to vote only in case of dividend default are not entitled to vote upon the question of the sale of the company's property when it is neither alleged nor proved that there are any existing defaults, p. 239.

Consolidation, merger, and sale, § 31 — Consent of stockholders — Rights of preferred stockholders.

2. Preferred stockholders not entitled to vote upon the question of the sale of corporation property are not in position to object that a proposed sale of the property to a municipality has not been authorized by vote of the shareholders pursuant to the requirements of § 72 of the General and Business Corporation Law of Missouri enacted in 1943, p. 239.

Security issues, § 5.1 — Redemption at call price — Corporate dissolution — Sale to municipality.

3. Preferred stockholders of a corporation whose property is to be transferred to a municipality under a plan for transfer of common stock and dissolution of the corporation are entitled to be paid on the basis of the call rate instead of the liquidating rate per share, since this is not a normal dissolution and liquidation as the term is ordinarily used, p. 241.

Depreciation, § 40 — Ownership of reserve.

4. A depreciation reserve, although contributed by customers of a public utility, does not belong to such customers, p. 241.

Consolidation, merger, and sale, § 6 — Jurisdiction of Commission — Public interest — Sale to municipality.

5. The Commission has jurisdiction to determine the public interest involved in the title to properties passing from a public utility corporation to a municipality under an arrangement for transfer of the common stock and dissolution of the corporation, p. 242.

Municipal plants, § 18 — Powers of municipality — Operation outside corporate limits.

6. A municipality, upon acquisition of electric and gas properties of a corporation operated as a unit both inside and outside the city, can lawfully own and operate the properties located outside the corporate limits, where such properties are relatively small in amount, so long as it operates the entire properties primarily for the purpose of supplying electricity and gas for its own needs and the needs of its inhabitants and is incidentally selling surplus electricity and gas to nonresidents without impairing the usefulness of its properties for the primary purpose, p. 243.

(WILSON, Commissioner, dissents.)

By the COMMISSION: The above caption is the caption of the application filed by the city of Springfield in this case. It expresses the purpose and prayer of said application so well that a detail of the application is wholly unnecessary, but references to its allegations will be hereinafter made as may be necessary to a full understanding of the application.

We will first identify the corporations concerned and designate abbreviated names for each and sketch the plan involved.

The Springfield Gas and Electric Company, hereinafter called the Springfield Company, is a public utility corporation, organized and existing under the laws of the state of Missouri, with its principal office at Springfield, Missouri. All of its common stock, consisting of 50,000 shares, without par value, is held and owned by Federal Light and Traction Company, hereinafter called Federal, a corporation duly organized and existing under the laws of the state of New York and having its principal office in New York city in the last-named state. The city of Springfield, Missouri, hereinafter called City, is a municipal corporation of Missouri, that is: it is a city of the second class and operates under the general laws of the state of Missouri applicable thereto. This City and its inhabitants are served by the Springfield Company with electricity, gas, bus transportation, and steam heating and the inhabitants of certain surrounding territory outside the corporate limits of the City are served by said Springfield Company with electricity and gas. The City desires to acquire all the facilities of the Springfield Company so used in said service and to thereafter operate the same in the same service. The plan of accomplishing this end, as set forth in the application, is for the City to purchase all said common stock in the Springfield Company from the Federal, which owns it, and simultaneously with its acquisition, to cause the Springfield Company to be dissolved and liquidated, its bonds and other obligations to be paid, its preferred stock to be retired, and all the net assets and properties (including of course the utility facilities) will be conveyed and transferred to the City, whereupon the Springfield Company will be permitted to cease operation as a public utility.

This application was heard before all members of this Commission on Wednesday, March 7, 1945, at 1:30 P. M., after due notice to all interested parties. At said hearing the City

was represented by its mayor and by counsel. The Springfield Company filed an acknowledgment of service of notice of the filing of the application and disclaimed all interest therein. Greene county, Missouri, by members of the county court and its prosecuting attorney filed an acknowledgment of a notice of the hearing, entered its appearance, specifically consented that the application may be heard, tried, and determined by this Commission, and waived any and all objections to any order that may be made by this Commission. Mr. M. D. Lightfoot appeared for himself as a consumer, and a taxpayers' league, and, while favoring the granting of the application as asked, pointed out that the consumers have contributed the depreciation reserve which should be under the authority of this Commission until it be found out whether or not that should revert to the ratepayers who paid it in or whether it should remain in the pocket of the company. Mr. Ted Hutchens, chairman of the industrial committee of the chamber of commerce of Springfield adopted on behalf of his committee the suggestions of Mr. Lightfoot.

[1, 2] A written protest was filed on behalf of Anna L. Graves and thirteen other preferred stockholders, series A, of the Springfield Gas and Electric Company, acting on behalf of themselves and for all other owners of preferred stock series A. This protest called attention to § 72 of the general and business corporation law of Missouri enacted in 1943, and urged that under its terms no corporation could sell all or substantially all of its property and assets, where such sale is not made in the usual and regular course of business, except in the manner therein set forth; that, among other things, said statute provided that the board of directors of the Springfield Company should first have adopted a resolution recommending such sale and directing the submission thereof to the vote of the shareholders entitled to vote thereat; that no such resolution has been made nor has the proposition been submitted to a vote of the shareholders, including the protestants and others similarly situated, and that such sale has not been authorized by at least three-fourths of the outstanding shares entitled to vote theeron as required by the statute mentioned.

In this protest the protestants further called attention to the fact that their preferred stock, series A, par value of $100 per share is redeemable only at the *call* price of $115 per share instead of at the liquidating price of $100 per share. Their protest further charged that the City and the Federal, if permitted by this Commission, intends to and will attempt to retire the stock owned by the protestants and others at a liquidating price of $100 per share; that by reason of the favorable dividend rate of $7 per share such preferred stock has commanded a high market value, and that many of these protestants have paid as high as $112 per share for their stock, and that to permit retirement of such stock at less than $115 per share would work a great hardship and fraud upon protestants, and would constitute a confiscation of their property. The protestants in their written protest particularly called attention to the contract between the City and Federal in which it is provided that "there shall

be deducted from such purchase price of $6,750,000 an amount equal to the preferred stock then outstanding and the first mortgage bonds then outstanding at the par and principal amounts thereof respectively, together with the then applicable additional call prices unless prior thereto an order shall have been made by competent authority permitting or requiring redemption of such securities without the payment of premium in which latter case the deduction shall be in an amount in accordance with such order."

The protestants prayed that the application be not approved unless and until the said laws of the state of Missouri applicable to the sale and purchase of the property and assets of the Springfield Gas and Electric Company be complied with and that the Commission make no order depriving the protestants and other owners of stock of their lawful rights as above set forth.

It was admitted at the hearing that much of this preferred stock, series A, had been purchased by the protestants and other holders at prices ranging from $108 to $112 per share. The City stated that in making the settlement with the Federal Company it intends to withhold the price of $115 per share of all the outstanding preferred stock, but would leave the question of whether the price of $115 or $100 per share was the applicable price for future determination. Attorneys for protestants interpreted this to mean for further litigation.

At the hearing the plan for the purchase of this common stock by the City from Federal was shown in evidence, together with Exhibit B, which is a copy of the very recent opinion of the supreme court of Missouri, in Case No. 39356, entitled Springfield v. Monday (1945) — Mo —, 185 SW (2d) 788. The legal right of the City to use this method of acquiring said public utility property (that is, by purchasing the common stock of the Springfield Company and causing said Springfield Company to be dissolved and liquidated and the net assets and properties to be conveyed, transferred, and distributed to the City) has been adjudicated, determined, and approved of the supreme court of Missouri in this case. The legal right of the City to issue its public utility revenue bonds to finance such acquisition was also approved in this case.

There were also introduced in evidence Exhibit A, which is the contract between the City and Federal, and Exhibit D, which is the authoritative ordinance of the City supporting all such matters. Exhibit C was also filed in the case. It is the waiver etc., of Greene county, Missouri, previously mentioned. There was also introduced in evidence Exhibit E which is an extract from the Articles of Agreement of the Springfield Company dated April 17, 1927, and recorded in the Office of Recorder of Deeds of Greene county on the same day in Book 514 at page 344. It provides that such preferred stock may be redeemed in whole or in part on any date fixed for the payment of dividends at a redemption price of $115 per share (with other provisions unnecessary to notice) and in the event of a dissolution, litigation, or winding up of the corporation, whether voluntary or involuntary the redemp-

tion rate for the retirement of such stock is $100 per share.

It also provides that the common stock shall have exclusive voting powers, and that the preferred stock shall have no right to vote at any time at any meeting of the stockholders or election of the corporation or otherwise to participate in any action taken by the corporation or the stockholders, except as therein otherwise specifically provided or as required by law. The law does not appear to confer voting privileges upon preferred stockholders unless the instrument creating them does so, and the only exception provided later in the instrument is that if, and as often as, two quarterly dividends payable on the preferred stock shall be in default on the preferred stock that immediately upon the happening of such event and until such default and subsequent defaults have been made good, the entire voting power for the election of directors shall become and remain vested exclusively in the preferred stock, and if defaulted dividends shall thereafter be paid the entire voting power for the election of directors shall again be vested in the common stock. The protestants neither alleged nor proved any existing defaults. Thus, it appears these preferred stockholders are not entitled to vote upon the question of the sale of the company's property, and are not under the protection vouchsafed to "shareholders" under said § 72. This disposes of protestants' first point.

[3] As to protestants' second point. They charged that the City and Federal plan to pay off these preferred stockholders at the liquidating rate of $100 per share when they should be entitled to be paid on the basis of the *call* rate or $115 per share. The question of public interest is, however, involved in the retirement of the preferred stock. In the usual or normal sale of public utility properties the parties involved are utilities and the liquidation of outstanding securities of the vendor is treated as a call in the manner provided in the securities outstanding. The supreme court in the Springfield Case, *supra,* has pointed out that the dissolution and liquidation of the company is the method by which the title to the property may be transferred from the Springfield Company to the City. Since the dissolution and liquidation is to be used as a means of the transfer of the property it is not a normal dissolution and liquidation as the term is ordinarily used. In this case due to the peculiar circumstances resulting from a sale of a utility corporation to a municipality it is necessary that the corporation be dissolved and to this extent we are of the opinion that a dissolution which may result is not a dissolution as this term is generally used, and for that reason we are of the opinion that the preferred stockholders should receive for their stock $115 per share which is the call price, and our order will be so conditioned.

[4] The point made by the others who appeared is not sufficient to require a denial of the prayer of this application. These others, definitely, did not wish any such result. Their idea that any part of the depreciation reserve, although contributed by the customers, belongs to such customers, is contrary to the law as expressed by our supreme court in State ex rel. Empire Dist. Electric Co. v. Public Serv-

ice Commission (1936) 339 Mo 1188, 16 PUR(NS) 437, 100 SW(2d) 509.

On March 7, 1945, this Commission ordered the Springfield Company to reduce its gross operating revenues in the electric and gas departments for the year 1945 at the rate of $28,000 per month ($25,000 electric and $3,000 gas) for the period in 1945 during which the company shall own and operate electric and gas properties by credits to customers to be made in the same manner as used by the company in the 1944 reductions. During the hearing in this matter the attention of the mayor of the City of Springfield was called to the fact that this reduction had been ordered, and he was asked if the City would make these reductions and refunds if the Springfield Company would not have time to compute the reductions and to make the refunds before the consummation of this sale, if it should be consummated. The mayor replied that that this deduction would be made from the purchase price in settling with the Federal and that the City would make the refund to the customers in the manner required by the order.

[5] Our supreme court in the Springfield Case, *supra,* has covered about all the law which attends this case and has left very little, if anything, for us to determine except, of course, the jurisdiction to determine whether or not it is in the public interest, or whether or not it is detrimental to the public interest, for these utility properties to pass from the Springfield Company to the City and that the Springfield Company be permitted to cease operations upon the consummation of the plan. The best legal authority for the City to dissolve and to liquidate the corporation in order to obtain the property comes from the supreme court in this Springfield Case. The Springfield Company intends to comply with the statutes and laws of Missouri in accomplishing the dissolution. It is within our jurisdiction to determine the public interest involved in the title to the properties passing from the Springfield Company to the City. This will next have our attention.

It was shown in evidence that if the City obtains and operates the property as a municipal plant it will escape large sums of taxation which the present operating utility is required to pay to the United States in the way of income and other taxes as well as state, county, and school taxes. The mayor and one member of the council who testified, testified further that in their opinion they could reduce rates to all consumers in the City below the present rates even after the reductions required by the Commission, and could furnish lower rates to the consumers than could a utility, which is subject to all the taxation and regulations which obtain. It was further shown that it was the purpose of the City to employ all persons now employed by the Springfield Company which now operates the property and that all of such employees have been advised that they will be retained. It was further shown that the present employees have operated the Springfield Company in a highly satisfactory manner, and have rendered prompt, efficient, and adequate service, and that the same operators and employees can do the same thing when working for the City if it obtains the property and operates

it. The City officers also further testified that it was their purpose when changes, if any, should occur, in the present personnel as above mentioned, to employ other capable and competent persons for their places. There was further testimony to the effect that some industries have refused to locate in Springfield for the sole reason that they could not operate under the high rates which the said utility (the Springfield Company) has required.

Before the matter of municipal ownership proceeded very far the chamber of commerce and thirty-five other civic organizations of the City were invited to send two delegates to a meeting to discuss the entire matter. As a result of that meeting a smaller committee composed of nine persons was constituted and has been an advisory committee for the mayor and city council throughout all the time that municipal ownership has been under consideration by the City. It is the purpose and hope of the City that legislation may be obtained to give such an advisory committee a legal status. The character and prominence of these nine members who have been serving, and now constitute the advisory committee, was shown in evidence, although it was shown that only one of them has had any previous experience in operating a utility.

In this case the consumer and the investor will have the same incentive to secure successful operation of the plant. The consumer because he will be interested in good service at the lowest possible price, and the investor because it is only from the proceeds of a successful operation that he will have any assurance of the security of his investment, since no interest or principal retirement can come from any source except from the revenues derived from the operation of the utility properties.

[6] There was a question raised at the hearing as to whether or not the City of Springfield upon acquisition could lawfully own and operate the electric and gas properties located outside the corporate limits of the City. Certain small parts of the electric and gas properties proposed to be acquired by the City of Springfield are located outside the corporate limits of the City. However, the evidence shows that the electric and gas properties located outside the City limits are relatively small in amount. The operation of these properties outside the City limits is incidental to the operation of the principal parts of the systems located inside the City. Service is supplied exclusively from the plants located inside the City. The entire properties both inside and outside the City are operated as a unit. We are of the opinion that under the facts and circumstances in this case that the City of Springfield can lawfully own and operate that part of the properties located outside the City limits so long as it operates the entire gas and electric properties primarily for the purpose of supplying electricity and gas for its own needs and the needs of its inhabitants and is incidentally selling surplus electricity and gas to nonresidents without impairing the usefulness of its gas and electric properties for said primary purpose. We are supported in this conclusion by the supreme court's holding in Speas v. Kansas City (1931) 329 Mo 184, 44 SW (2d) 108, and the Springfield Case, *supra*. Also subparagraphs 37 of

§§ 6609 and 7787, Rev Stats Mo. 1939.

From the evidence adduced this Commission is of the opinion and finds that it is not detrimental to the public interest for the City immediately upon its acquisition of all of the common stock of the Springfield Company to cause said Springfield Company to be dissolved and liquidated and its net assets and properties to be conveyed, transferred, and distributed to the City and permitting said Springfield Company to cease operation as a public utility, all conditioned upon the preferred stock being called and paid off at the rate of $115 per share, plus all accrued and unpaid dividends, if any, or such sums be made available to such preferred stockholders by deposit thereof, as set forth in said Exhibit E.

Entertaining these views,

It is, therefore,

Ordered: 1. That if the City of Springfield shall hereafter acquire all the common stock of the Springfield Gas and Electric Company (a corporation) then and in that event permission is hereby granted to dissolve and to liquidate the Springfield Gas and Electric Company and its net assets and properties to be conveyed, transferred, and distributed to the City of Springfield, Missouri, as the holder of all of the common stock of said company, from and after which the said Springfield Gas and Electric Company shall cease to operate as a public utility and its certificate of convenience and necessity, granted by this Commission, shall thereby cease and come to an end, all upon the condition that the preferred stock shall be called and paid off at the rate of $115 per share, plus all accrued and unpaid dividends, if any, or that such sums be made available to such preferred stockholders by deposit thereof as set forth in Exhibit E proffered in this case.

Ordered: 2. That this report and order shall be in effect on March 24, 1945, and that the secretary of the Commission shall forthwith serve certified copies of same upon all interested parties.

WILSON, Commissioner, dissenting: The application in this case seeks an order of this Commission approving the transfer of all of the physical properties of Springfield Gas and Electric Company to the City of Springfield, Missouri, and the discontinuance of operation by the company as a public utility and the dissolution of the corporation.

This case, in my opinion, is one of considerable importance, involving the utility properties in the fourth largest city in the state and the electric, gas, and transportation services to the City of Springfield's more than 60,000 inhabitants and electric service to others within an area of 8 miles beyond the city limits in all directions according to the maps filed with this Commission by the Springfield Gas and Electric Company. In determining whether the proposed transfer should be approved the issue before this Commission is whether or not such a transfer would be in the public interest. That question must be decided upon the record that is before the Commission and upon the law contained in the applicable statutes and the adjudicated cases.

Although the supreme court of Missouri has recently held that the City

of Springfield may issue public utility revenues bonds for the purchase of the common stock of the Springfield Gas and Electric Company from the Federal Light & Traction Company, Springfield v. Monday, No. 39356, (1945) — Mo —, 185 SW(2d) 788, the court did not hold that the City can operate as a public utility outside the city limits, and that conclusion does not follow as of course. Under the most recent decision of the supreme court of Missouri upon this subject, Taylor v. Dimmitt, 336 Mo 330, 78 SW(2d) 841, 98 ALR 995, decided in 1935, which case has never been criticized or overruled, I am of the opinion that the City of Springfield cannot lawfully serve the electric and gas customers located outside the corporate boundaries, and for that reason the proposed transfer would be detrimental to the public interest. The case of Taylor v. Dimmitt, *supra*, involved a question of whether or not the city of Shelbina, Missouri, a city of the fourth class which owns and operates a municipal electric plant and having a surplus of electric energy from its municipal plant, could construct, maintain, and operate an electric transmission line for the purpose of furnishing service to consumers residing in Lakenan, an unincorporated village located approximately 5 miles from the city limits of Shelbina, and also to furnish service to consumers along such proposed electric transmission line. The court held that a municipality in rendering electric service to consumers outside the corporate boundaries performs no municipal function, but enters a field of private business, and authority for such action must clearly appear; that a municipality has no implied power to engage in private business; and that the city of Shelbina was without statutory authority to construct, maintain, and operate a transmission line for the purpose of furnishing service to consumers outside its corporate boundaries. In that case the court, at p. 336 of 336 Mo, said:

" . . . cities in owning, operating, and maintaining electric utilities act in their proprietary, or business, as distinguished from governmental capacity. In rendering electric service to consumers outside their corporate boundaries, they perform no municipal function, but depart from the primary objects for which they have existence, and enter a field of private business. Authority for such action, we think, should clearly appear."

Also: "Even as to governmental functions, Missouri cities have or can exercise only such powers as are conferred by express or implied provisions of law; . . ."

Also: " 'It is a general and undisputed proposition of law that a municipal corporation possesses and can exercise the following powers, and no others: (1) Those granted in express words; (2) those necessarily or fairly implied in, or incident to, the powers expressly granted; (3) those essential to the declared objects and purposes of the corporation—not simply convenient, but indispensable. Any fair, reasonable doubt concerning the existence of power is resolved by the courts against the corporation, and the power is denied.' St. Louis v. Kaime & Bro. Real Estate Co. (1903) 180 Mo 309, 322, 79 SW 140, 143 (quoting Dillon, Municipal Corp. vol. 1 (4th Ed) p. 145)."

The city of Springfield, Missouri, is a city of the second class and the applicable statutes are as follows:

"Section 6605 Rev Stats Mo 1939:

"Any city of the second class in this state . . . may purchase, receive, and hold property, both real and personal, within and without such city, *for any public use or purpose* . . ."

"Section 6609 Rev Stats Mo 1939:

"XV. To procure by purchase, condemnation, gift, or otherwise, within the city or beyond the limits thereof, property for use of the city *in and for the performance of its functions,* and to manage and regulate the use thereof . . .

"XXXVI. To acquire by condemnation, purchase, gift, lease, or otherwise, property, real and personal, within such city and beyond the limits thereof . . . for the erection, construction, maintenance, and operation of gas plants and systems, heat plants and systems, electric light plants and systems . . . electric for other power plants and systems, to be used *in supplying the city and its inhabitants with light, heat, and power; and for any other public use or purpose* . . .

"XXXVII. To acquire by condemnation, purchase, gift, lease, or otherwise, property real and personal within such city or beyond the limits thereof, and to establish, construct, maintain, add to, equip, improve, own, control, regulate, and operate . . . electric light systems, electric or other heat systems, electric or other power systems, electric or other railways, . . . and transportation systems of any kind, . . . and all public utilities not herein enumerated and everything required therefor; . . . to sell . . . gas, electric current, and all products of any public utility operated by the city . . . ." (Italics by the writer.)

In the case of State ex rel. Kansas City v. Orear (1919) 277 Mo 303, 210 SW 392, the city comptroller of Kansas City contended that the purpose for which the proceeds of ice plant bonds were to be used was not a public purpose, and, therefore, there was lacking both legislative and constitutional authority to use therefor public moneys raised by public taxation. The court in that case said, at p. 317 of 277 Mo:

"That there must be authority in the charter of Kansas City, either express or clearly implied, permitting that municipality to engage in making and selling ice, before it can legally do so is settled by the repeated adjudications in this state." (Citing cases.)

I am unable to find any charter or statutory provision, express or implied, which authorizes the City of Springfield to engage in the private business of conducting a public utility.

It is stated in the majority opinion, at p. 243, that the electric and gas properties located outside the city limits are relatively small in amount, that the operation of these properties outside this City is incidental to the operation of the principal parts of the system located inside the City, and the opinion is expressed that the City of Springfield can lawfully own and operate that part of the property located outside the city limits so long as it operates the entire gas and electric properties primarily for the purpose of supplying electricity and gas for its own needs and the needs of its inhabi-

ants and is incidentally selling surplus electricity and gas to nonresidents without impairing the usefulnes of its gas and electric properties for said primary purpose, citing the supreme court decisions in Speas v. Kansas City (1931) 329 Mo 184, 44 SW(2d) 108; Springfield v. Monday, No. 39356 (1945) — Mo —, 185 SW (2d) 788, and § 6609 *XXXVII* and § 7787 Rev Stats Mo 1939. The question of importance here is not how much of the electric and gas properties is located outside the city limits. All of the electric and gas properties could lawfully be located outside the city limits if they were operated for the purpose of supplying electricity and gas to the electric and gas consumers within the city limits. It is the business conducted in serving the consumers outside the city limits which is unlawful. As stated above neither the Springfield Case nor the provisions of § 6609, *XXXVII* Rev Stats Mo 1939 authorize the conducting of such private business. In the Speas Case, *supra,* the plaintiffs, as resident taxpayers of Kansas City, Missouri, sought to have adjudged unconstitutional all provisions of said City's charter by which it and its officers and agents are authorized to supply water to nonresidents and to perpetually enjoin said City and its officers and agents from supplying water to nonresidents. The plaintiffs' petition alleged, among other things, that the City had constructed certain water mains running to and along the boundary line of Missouri and Kansas where Kansas City, Missouri, adjoins Johnson county, Kansas; that the City had placed water meters at the state line (which is also the City limits); that the purchaser of the water from Kansas City was charged the lowest consumer rate known as a combination rate based on the total consumption of water, and that the purchaser retailed and distributed the water to individual residents and citizens of the residential district of Johnson county, Kansas, at a higher and more profitable rate than that paid to defendant, Kansas City, Missouri, but which rate was lower than that charged to and paid by the great majority of the resident taxpayers or citizens of Kansas City, Missouri. The petition also contained the general allegation that Kansas City, Missouri, was selling and distributing large quantities of water to various other nonresident and noncitizen consumers, the names of whom were unknown to plaintiffs. The petition further complained that by reason thereof there had been frequent shortages of water for the use of citizens and taxpayers of Kansas City, Missouri, and that no part of the expenditures for the water distribution system had been, or would be, paid by nonresident users and consumers of water. In passing upon the questions presented in that case the court said, at p. 194 of 329 Mo:

"Is the charter power of Kansas City to supply water to nonresidents in conflict with its charter power to acquire and to operate waterworks for public purposes only or with the constitutional provision that taxes may be used for public purposes only? We think not, because the charter power of Kansas City to supply water to nonresidents may be exercised, as was doubtless intended by the framers of its charter, for the benefit of the City and its inhabitants. In other words,

if Kansas City acquired and is operating its waterworks primarily for the purpose of supplying water for its own needs and the needs of its inhabitants, and is incidentally selling surplus water to nonresidents, without impairing the usefulness of its waterworks for said primary purpose, such exercise of its charter power to supply water to nonresidents is not inconsistent with its charter power to acquire and to operate waterworks for public purposes only, nor with the constitutional provision that taxes may be used for public purposes only." The question involved in the Speas Case, *supra*, was the constitutionality of the charter provisions authorizing the selling of surplus water to nonresidents. That case did not hold that a municipal corporation can lawfully conduct a public utility business serving consumers outside the city limits, nor does Kansas City's charter authorize the conducting of such a private business.

The majority opinion in this case also cites § 7787 Rev Stats Mo 1939. That section is the same as § 7642 Rev Stats Mo 1929, which is applicable to any city in the state which owns and operates any electric light or power plant, including cities of the second class, such as Springfield, cities of the fourth class, such as Shelbina, and cities under special charters, such as Kansas City. That section provides as follows:

"Section 7787. Cities empowered to sell light and power.—Any city in this state, which owns and operates any electric light or power plant, may, and is hereby authorized and empowered to supply electric current from its light or power plant to other municipal corporations for their use and the use of their inhabitants, and also to persons and private corporations for use beyond the corporate limits of such city, and to enter into contracts therefor for such time and upon such terms and under such rules and regulations as may be agreed upon by the contracting parties. (Rev Stats 1929, § 7642.)"

This section, above quoted, was considered by the supreme court of Missouri in its most recent case upon this subject, Taylor v. Dimmitt, 336 Mo 330, 78 SW(2d) 841, 98 ALR 995, decided January 7, 1935, almost three years later than the Speas Case, *supra*. The Speas Case which is cited in the majority opinion in this case is not in point and is so recognized by the supreme court in the opinion in Taylor v. Dimmitt in which the court says, at p. 338 of 336 Mo:

"The Missouri cases mentioned by appellant (Speas v. Kansas City [1931] 329 Mo 184, 44 SW(2d) 108; Public Service Commission v. Kirkwood [1928] 319 Mo 562, 4 SW (2d) 773; and McMurry v. Kansas City [1920] 283 Mo 479, 223 SW 615) do not involve the issue upon which this case turns."

At the hearing in Case No. 9067, Public Service Commission v. Springfield Gas & E. Co. before this Commission on the 14th and 15th days of February, 1944, 53 PUR(NS) 95, the evidence showed that the electric department was then serving approximately 21,462 domestic, commercial, and power consumers in Springfield and the rural area lying within said 8 miles of the City's corporate limits, and that the gas department was serving approximately 11,759 city and rural consumers as of December 31,

1943. The evidence in the case before us does not show the number of consumers outside the city limits nor income derived therefrom, but certainly a number of large power users are located outside the city limits, including the Frisco railroad shops and two government hospitals, the Medical Center for Federal Prisoners, and O'Reilly General Hospital.

If the city of Springfield could lawfully conduct a private business to serve the consumers 8 miles beyond the city limits, why could it not serve 10, 15, 25, or even 100 miles beyond the city limits?

Aside from the legal aspects of the proposed transfer, which would leave a considerable number of the present consumers of Springfield Gas and Electric Company, including large power users, without electric and gas service, and being for that reason detrimental to the public interest, after a careful analysis of the transcript of the evidence in this case it is my opinion that the evidence fails in other respects to show that the transfer would be in the public interest. In fact, the record on the whole is very inadequate. No reasonable showing was made as to any public benefit to be derived from this purchase which would offset the definite losses which will result to the school district, road districts, and to the county as a consequence of the acquisition of these properties by the municipality. No actual plan has been adopted by the City regarding the rates to be charged and there is no guaranty that the reduction which this Commsision has required to be made by allowing credits will be made permanent. If such a guaranty were made, it would be no additional benefit in view of this Commission's outstanding order. No improvement in service is anticipated, and statements were made that the service now is very satisfactory. Mayor Carr stated: "The present management has given wonderful service for a number of years." No economy of operation is anticipated and the entire personnel of the Sprnigfield Gas and Electric Company is to be retained. The only economy which was discussed was the savings in taxes. The amount of such savings is largely defined by the loss in tax revenue to the school district, road districts, the county, and the Federal government. None of these parties who will suffer a loss in revenue will receive equivalent benefits. If the tax savings within the City are not passed on to the public in rate reductions or through reductions in taxes, even this saving is doubtful.

Vague references were made to Utopian power rates which were to bring new industries to Springfield, but cross-examination disclosed that no schedules had been prepared to bring about these low rates nor was it shown that such reductions could be made without imposing a burden on the residential and other consumers.

Mr. John Randolph, general counsel of the Missouri Public Service Commission, asked Mayor Carr on cross-examination:

Q. Mayor Carr, you said you thought there would be many benefits that would come out of municipal ownership in this case. You expected to lower rates, have you made any definite studies of what you can do in that respect?

To which the mayor answered:

A. No, we haven't and the reason is we haven't as yet secured the property and there is plenty of time to do that. I don't see why it is necessary to do that before you get the property.

I have no doubt that the mayor and other city officials sincerely hope to reduce rates as they have testified were the City to acquire the property herein involved, but the operation of public utility properties is a highly technical business and rates are not reduced by wishes. Witnesses stated that new industries had been forced to choose other locations because of the high power rate at Springfield and it was stated that a large tire plant had located in Oklahoma instead of at Springfield because the Oklahoma location offered a 4-mill power rate. It was inferred that the acquisition of the electric utility properties by the City would enable it to reduce power rates in order to compete in the acquisition of new industries.

Our records show that during 1943 the company purchased power from The Empire District Electric Company in an amount of $84,836 which covered 12,807,560 kilowatt hours. This purchased power cost the Company .656 per kilowatt hour. If these new industries which are to be attracted to Springfield by the suggested 4-mill rate actually are obtained, it is logical to assume that the amount of power purchased will be increased in order to supply this additional demand. If the 4-mill rate is offered to these power consumers, it can only be done by passing the difference between .656 and .4 on to the domestic and commercial users which could easily result in requiring an increase for those types of consumers in order to offer the low rate which the City desires for the purpose of attracting new industries. Certainly, the benefit to domestic and commercial customers would be doubtful in that event.

On the 24th day of April, 1944, 55 PUR(NS) 406, the Commission issued a report and order wherein the Springfield Gas and Electric Company was ordered to reduce the gross operating revenue of its electric department for the year of 1944 by refunding, or by allowing credit on future bills to customers, until the amount of $304,000 shall have been refunded. Prior to issuing that order the Commission held a hearing at which the city of Springfield appeared by its attorney, mayor, and members of the council, and a group of commercial and industrial electric consumers appeared by their attorney, Mr. Fred A. Moon. It was claimed originally by the industrial users that the power rates in the city of Springfield were not comparable to the power rates in the state of Missouri generally, but that the domestic and other rates were comparable to such rates throughout the state, and it was contended that the total rate reduction should go to the large power users. Mr. Moon requested time in which to prepare as an exhibit a study showing comparison of power rates in Missouri, and time was granted for that purpose. Thereafter, the industrial users secured the services of an electrical engineer to analyze the power rates of Springfield as compared with other cities in Missouri, and after said analysis was completed Mr. Moon advised the Commission that he found both the domestic and power rates

were comparable to the same classes of rates in other cities in Missouri and not out of line. At a prior hearing in the same case on February 14 and 15, 1944, 53 PUR(NS)95, Mr. Louis W. Reps, who testified on behalf of the chamber of commerce, asked that whatever rate reduction might be ordered be allocated to industrial power users and commercial light users. In his testimony Mr. Reps said, " . . . our residential rate is very much in line. In fact, we advertise at the time that it is the lowest in Missouri. . . . " I refer to previous records before this Commission for the purpose of pointing out that there is little to justify the belief that this proposed change of ownership can greatly benefit the rate situation within the city of Springfield.

The evidence shows that there has been appointed a group of businessmen, or so-called advisory board, described by the mayor as " . . . made up of some of our good citizens," but which has no authority in law. We have no reason to doubt the competency of these businessmen in their respective lines of business, but the record shows that only one of them has ever had any public utility experience, and that he is not connected with any utility at the present time.

The purchase price proposed in this case is $6,750,000. Some comment was made at the hearing regarding the fairness of this amount, and it was suggested that the City was paying more than $900,000 in excess of the price which had been offered by an individual and had been accepted by Federal for the common stock of the company.

This Commission in 1944, after an audit of the Springfield Company, fixed a rate base upon which the earnings of the electric and gas departments should be computed. No equivalent finding was made for the heating and transportation departments. The rate bases which were fixed in 1944, plus adjustments applicable thereto during the year of 1944, amount to $5,499,009 for the electric and gas departments. If we add to this amount the adjusted investment in the heating department and the recorded investment in the transportation department, the maximum amount which could be justified as value of this property would be $6,009,077. This amount is approximately $665,000 less than the agreed purchase price in this case.

An analysis of the balance sheet of this company for December 31, 1943, discloses that the earned surplus, plus the common capital stock liability, amounts to $299,446.70. This is an accepted method of determining common stock equity in a property. These figures, however, are not representative of the equity value as there are items of acquisition adjustment in a substantial amount which would have to be considered in a determination of this nature. However, ignoring these, it seems evident that the offer by an individual of a consideration of $650,000 for the common stock of this company was at least an adequate consideration and that the price which is proposed herein seems exorbitant and to the extent of the excess over fair value is contrary to the public interest of the citizens of Springfield.

In the rate base figures quoted above are included an amount slightly in excess of $100,000 for cash working

capital and material and supplies which amounts might reasonably be deducted in the above computation in view of the terms of the purchase contract which in substance provide that assets of this nature may be offset by the assumption of liabilities of the corporation.

The question as to the sentiment of the public at Springfield was discussed and opinions were stated on both sides. No actual test of this sentiment has been made. A vote was proposed on this matter at which time a consideration considerably in excess of the present one was involved. This vote was prevented by injunction. Since that time the consideration involved seems to have been reduced by more than $1,000,000 but is still some $900,000 in excess of a bid which was made by an individual and accepted by Federal. Possibly the public, if given an opportunity to vote, might register its objection to this large difference in consideration.

In addition to all of the other inadequacies of this record, in the haste with which this case has been presented and heard, I doubt if due process of law has been accorded to all interested parties. At the beginning of the hearing of this case, at intervals throughout the hearing and at the close of the hearing counsel for the preferred stockholders requested additional time in which to present the case of the 300 preferred stockholders. In view of the fact that this hearing was set upon less than ten-days' notice as required by the Rules of Practice and Procedure before the Commission and the statement of one of the counsel that he had read the petition for the first time on the morning of the hearing, in my opinion the request for continuance was reasonable. Also, I note that there are road districts within Greene county which will be deprived of certain taxes so that there is a possibility that there may be interested parties who received no notice of the hearing.

For the reasons above stated I dissent from the majority report and order and it is my opinion that the proposed transfer would be detrimental to the public interest and contrary to the public welfare.

MISSOURI PUBLIC SERVICE COMMISSION

Re Springfield Gas & Electric Company

Case No. 10628
April 4, 1945

INVESTIGATION *by Commission of disposition of works and system of a public utility company to a city; order to show cause issued.*

Consolidation, merger, and sale, § 13 — Unauthorized transfer — Investigation.

A public utility company which, it appears, has disposed of its property

by sale to a city without authorization from the Commission, should be required to show cause why its property has been disposed of, why such disposition is not unlawful and void, and why it should not be ordered to resume operation and to continue rendering utility service.

(HENSON, Commissioner, dissents.)

By the COMMISSION: Information having come to this Commission that the Springfield Gas & Electric Company of Springfield, Missouri, has disposed of the whole of its works or system necessary or useful in the performance of its duties to the public and that said works or system have been acquired by the city of Springfield, Missouri; that such disposition of its works or system by the Springfield Gas & Electric Company has been made by it without having first secured from the Commission an order authorizing it so to do as required by § 5651, Rev Stats Mo 1939, the Commission is, therefore, of the opinion that it should fully investigate the purported disposition of the works or system of said Springfield Gas & Electric Company to the city of Springfield by causing said Springfield Gas & Electric Company to appear before this Commission on a day certain and to show cause, if any there be, why its works or system have been disposed of without first having obtained an order of the Commission authorizing it so to do and to show further cause why such disposition is not unlawful and void under the provisions of said § 5651, Rev Stats Mo 1939, and therefore detrimental to the public interest and to show further cause why said Springfield Gas & Electric Company should not be ordered by the Commission to resume the operation of its properties, works, and system and to continue to render utilities services to the people of the city of Springfield, Missouri, and its surrounding territory under the certificate of public convenience and necessity heretofore issued to said company by this Commission.

It is, therefore,

Ordered: 1. That Springfield Gas & Electric Company be and it is hereby ordered and directed to appear before the Public Service Commission of Missouri at its hearing room in Jefferson City, Missouri, at 10 A. M. on Monday, April 9, 1945, and then and there show cause, if any there be, why the Springfield Gas & Electric Company has disposed of its works or system necessary or useful in the performance of its duties to the public without having first secured from the Public Service Commission of Missouri an order authorizing it so to do and show further cause why such disposition of its works or system is not unlawful and void and show further cause, if any there be, why the Public Service Commission of Missouri, should not issue its order requiring the Springfield Gas & Electric Company to resume its operations and service to the public as a public utility under its certificate of convenience and necessity heretofore issued by the Public Service Commission of Missouri.

Ordered: 2. That this order shall take effect on this date and that the secretary of the Commission shall forthwith serve on all interested parties a certified copy of this order.

Williams, Chairman, Wilson and Arens, Commissioners, concur; Henson, Commissioner, dissents in a separate opinion.

HENSON, Commissioner, dissenting: I dissent for the reason, mainly, that this course is wholly unnecessary at this time and tends to confuse, if indeed it does not overlap, the issues before this Commission in the pending case No. 10614, 58 PUR(NS) ante, p. 237, which is to be heard five days hence. That case, among other things, asks our approval of the transfer of the works and system in question. Whether after that hearing we shall grant or shall withhold such approval, we have ample authority to include in our order when made therein, an order to our general counsel to pursue any and every statutory remedy which could possibly be spawned as a result of this show cause order now made and if necessary to do so, to then bring into the matter the Springfield Gas & Electric Company. Our authority to embark upon the enforcement of these statutory remedies is to be found in §§ 5661 and 5710 Rev Stats Mo 1939, neither of which place any time limit which would prevent the determination, after that case is heard, whether or not we should also embark upon such a course or upon the one which has been instigated by the above report and order. Even if the works and system of said Springfield Gas and Electric Company have been transferred, there is no hint that as a result thereof the utility services have ceased or been impaired in the least nor is it suggested that either is threatened or that this report and order will prevent or cure it. Our paramount interest, mainly, is in services.

Without the slightest intention on my part to condone an unlawful act, if any, it is still my humble judgment that these utility services will be more nearly assured by a determination of our course, after hearing the pending Case No. 10614, *supra*, the results of which can be reviewed, during which time the courts can protect the services, rather than making the above report and order, which may unnecessarily and possibly cast doubt and uncertainty in the public mind on the entire situation until our decision on the merits in Case No. 10614, *supra*, is made.

CANTWELL v. ST. PETERSBURG PORT AUTHORITY

FLORIDA SUPREME COURT

R. J. Cantwell

v.

St. Petersburg Port Authority et al.

— Fla —, 21 So(2d) 139
March 2, 1945

EN BANC. HEARING *on certified question of local or general nature of statute authorizing Commission to grant franchises to operate ferries; validity of statute upheld.*

Statutes, § 9 — Validity — General or special laws.

1. A statute authorizing the Commission to grant franchises to construct and maintain bridges, causeways, tunnels, toll highways, and ferries over, under, or across any bays, inlets, bayous, lagoons, or sounds bordering on or connected with, the Gulf of Mexico is not unconstitutional as a special or local law but is a valid general law, where the title is not limited to those waters bordering on the Gulf of Mexico but comprehends all waters in the state of Florida, where, although that gulf does not touch all the counties of the state, it does touch a great many of them and materially affects the people of the state in many counties that it hoes not actually touch, p. 256.

Statutes, § 9 — Validity — General or special laws.

2. A law does not have to be universal in application to be a general law, p. 256.

APPEARANCES: James T. Smith, of St. Petersburg, for plaintiff; Lewis T. Wray and Harry I. Young, both of St. Petersburg, for defendant city of St. Petersburg; Allen C. Grazier, of St. Petersburg, for defendant St. Petersburg Port Authority.

TERRELL, J.: R. J. Cantwell, as complainant, filed his bill of complaint in the circuit court to restrain the city of St. Petersburg and the St. Petersburg Port Authority, as defendants, from purchasing the ferry franchise and assets of Bee Line Ferry, Inc., a Florida corporation. The theory of the bill of complaint is that the ferry franchise is a nullity because the act under which it was granted, Chap 13-884, acts of 1929, §§ 347.11 to 347.-25, Florida Statutes, 1941, F.S.A., is a special or local law in violation of § 20, Art III of the Constitution which provides that all laws for the "establishment of ferries" must be general.

A motion to dismiss the bill of complaint raises the sole question of whether or not Chap 13884, acts of 1929, is a local or special law. This question was certified to us under Rule 38 of the Rules of this court.

In Schwob Co. of Florida v. Florida Industrial Commission (1942) 152

Fla 203, 11 So(2d) 782, we attempted to define the general scope of Rule 38. There are peculiar "facts" in this case which we do not deem necessary to relate that make the question appropriate under the rule and reveal that it will facilitate the disposition of the case.

[1] In our view the question must be answered in the negative. An examination of the act in question discloses that it authorizes the Railroad Commission to grant franchises to construct and maintain bridges, causeways, tunnels, toll highways, and ferries over, under or across any bays, inlets, bayous, lagoons, or sounds bordering on or connected with the Gulf of Mexico, other prerequisites outlined in the act having been complied with. The title is not limited to those waters bordering on the Gulf of Mexico but comprehends all waters in the state of Florida. Other conditions are stated in the act; none of them appear pertinent to this discussion and are not considered. They are not assaulted and the regularity of the franchise is not drawn in question.

It is quite true that the Gulf of Mexico does not touch all the counties of the state but it touches a great many of them and materially affects the people of the state in many counties that it does not actually touch. It may therefore be said to affect directly or indirectly every citizen of the state. The Railroad Commission is a state agency and has construed the act to be one of general import. The revisers included it in the general laws and it deals with a state agency. We think these factors are ample to classify the act as one general in charac ter; in fact, we do not see that it ha a single attribute to recommend it a a local or special law.

[2] A law does not have to be uni versal in application to be a genera law. Laws relating to the location o the capital of the state, the state uni versity, the state prison farm, th hospital for the insane and other stat institutions are local in character bu general in application and are regard ed as general laws. The act under con sideration is easily within this class.

The certificate is granted and in re sponse to the question certified we an swer that Chap 13884, acts of 192 is a general law. In application o perspective we do not see that it ha the first attribute of a special law.

Chapman, C. J., and Brown, Bu ford, Thomas, and Adams, JJ., con cur.

Sebring J., agrees to conclusion.

BROWN, J. (concurring): Certain ly the legislature has the power t grant and prescribe powers to a stat agency, such as the Railroad Commis sion, so long as no constitutional pro vision is violated. The legislature ma have had good reasons for confinin the exercise by the Commission of th powers here in question to bays, inlets etc., along the Gulf coast. A glanc at the map shows that there are marke geographical differences between th Gulf coast and the Atlantic coast o Florida. It appears to me that we ar here dealing with a general law. Se State ex rel. Gray v. Stoutamir (1938) 131 Fla 698, 179 So 73 16th headnote.

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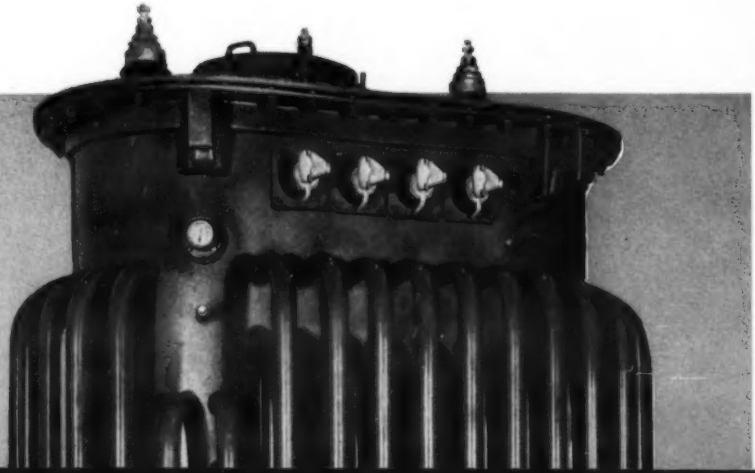

Industrial Progress

Selected information about products, supplies, and services offered by manufacturers. Also announcements of new literature and changes in personnel.

Lt. Col. Stone Elected President Stone & Webster, Inc.

LT. Col. Whitney Stone has been elected president of Stone & Webster, Inc., succeeding George O. Muhlfeld who now becomes vice chairman of the board of directors. Col. Stone first joined the firm of Stone & Webster in 1930 and became an executive vice president in 1936. In January, 1942, he resigned his position and withdrew from all his directorships to join the Army Ordnance Department, and since that time has served in the New York, Cleveland, and Boston Ordnance Districts. During the past year until the army released him to return to Stone & Webster, he has been deputy district chief of the Boston Ordnance District.

Mr. Muhlfeld, who now becomes vice chairman of the board, has been associated with the Stone & Webster organization for over forty years, serving as president since 1931.

The new president is a son of the late Charles A. Stone, who with Edwin S. Webster, present chairman of the board of directors, organized the firm as a partnership in 1889. At the time of his death in 1941 Charles A. Stone was chairman of the board of directors, a position he had held for many years.

The firm through its subsidiaries has long been among the leaders in the fields of engineering and construction, public utility supervision, and investment banking. Its principal subsidiaries are Stone & Webster Engineering Corporation, Stone & Webster Service Corporation, and Stone & Webster and Blodget, Inc. During the war period the Engineering Corporation has had an important part in the design and construction of projects costing in excess of a billion dollars.

Neptune Meter Promotions

JAMES H. JUDGE, Chicago district manager of the Neptune Meter Company since 1932, has been promoted to the post of assistant general sales manager. Mr. Judge has had twenty-two years of sales experience with the Neptune Meter Company. Previous to his appointment as Chicago district manager, he had as his sales territory Illinois and part of Missouri.

H. A. Tolburg, of Springfield, Illinois, who has been with the company since 1936, covering the state of Illinois, has been appointed Chicago district manager. Previous to his joining the Neptune Meter Company, Mr. Tolburg had sixteen years of engineering experience in the operation of municipal water works serving as city engineer and superintendent of water.

Appoints New Distributor

ANNOUNCEMENT comes from Davey Compressor Company, Kent, Ohio, of the appointment of the Construction Equipment & Supply Company, Brushton avenue at Thomas boulevard, Pittsburgh, Pennsylvania, as a distributor for Davey products, which include portable and stationary compressors, truck power take-offs, and pneumatic saws. Davey operations of the new dealer will embrace the western area of Pennsylvania and the northern panhandle section of West Virginia.

Chevrolet Promotions

THE appointment of William J. Scott as assistant general manufacturing manager of Chevrolet Motor Division was announced recently by Hugh Dean, Chevrolet general manufacturing manager.

A veteran of 30 years' continuous service with Chevrolet, Mr. Scott had been manager of the division's gear, axle and forge plants in Detroit since 1939 and, also, since 1942, in charge of war production at Chevrolet aluminum forge plants in Muncie, Indiana, and Saginaw, Michigan.

Announcement of the appointment of Tom F. Brown to the position of assistant general sales manager of Chevrolet in charge of parts and accessory merchandising, warehousing and distribution was made by William E. Holler, Chevrolet's general sales manager. Mr. Brown succeeds Wendell G. Lewellen, formerly assistant general sales manager of the Chevrolet Motor Division, who now becomes an executive of the General Motors Corp.

In his new capacity, Mr. Brown heads up a highly specialized operation designed to give added effectiveness to the increasingly important contribution parts distribution is playing in the maintenance of civilian transportation, during the war and postwar period. Under this new arrangement, the distribution and warehousing functions of the parts operation are separated, in order to better serve owners and

users through the Chevrolet dealer organization.

Mr. Brown is assisted by I. W. Thompson as national manager of parts and accessory merchandising, and John P. Hopkins as national manager of warehousing and distribution.

Irvington Introduces Cardolite 5616

THE Irvington Varnish & Insulator Company of Irvington 11, New Jersey, has introduced a cold setting plastic to be used as a filling material for junction boxes, stuffing boxes, pot-heads and similar void spaces encountered in electrical work. Known as Cardolite 5616, this liquid resin is mixed with Irvington 5612 Setting Agent prior to use. Approximately four hours after mixing, the two ingredients will gel at room temperature to the point where flow is no longer possible, and after several days, the end product is a tough rubbery mass which will not flow under heat nor become brittle in the cold. The set compound is insoluble in water, oil, acids, and alkalies. Although Cardolite 5616 will adhere to metal, it can be stripped away cleanly to allow repairs to terminals and cable strips.

Originally made for filling junction boxes on marine cable installations, Cardolite 5616 is now of interest in all applications where a free-flowing material is required which will set to form a rubbery solid.

Companies Use Multigraph For Signing Payroll Checks

COMPANIES with large payrolls are validating and signing checks with the Multigraph as a means of saving time and facilitating distribution to employes, according to reports received by Addressograph-Multigraph Corporation, manufacturer of business simplification equipment, Cleveland, Ohio.

A Wisconsin corporation that recently inaugurated this system found that it could sign 10,000 checks in two hours. The Multigraph plate on which the signature is embossed is locked in a safe by the paymaster until the checks are signed under his supervision.

The report lists three large corporations that recently began to use Multigraph equipment for this purpose.

National Battery Promotion

EFFECTIVE May 1, 1945, Richard H. Rowland, vice president in charge of the National Battery Company's Gould Industrial Division, Depew, New York, assumed the added responsibility of general sales manager, succeeding John C. Sykora, resigned, according to an announcement issued by A. H. Daggett, National Battery president.

Mr. Rowland was vice president of the St. Paul Engineering & Manufacturing Company prior to his recent connection with the National Battery Company. In addition to his general administrative responsibilities, he will direct the operations of Gould's entire sales and service field organization.

Mr. Sykora, whose resignation terminates twenty-six years of Gould service, has been appointed director of sales, Portable Products Company, New York. At the time of his resignation he was Gould vice president in charge of sales.

Nelson B. Buehrer Joins F. J. Evans Eng. Co.

THE F. J. Evans Engineering Company announces that Nelson B. Buehrer has become a new member of the firm with headquarters at the general offices in Birmingham, Alabama. He will direct sales of heating and air conditioning equipment to gas utilities and dealers served by the company throughout the south.

Mr. Buehrer formerly was with Surface Combustion Corporation, Toledo, Ohio. Evans Engineering is manufacturer's agent for the Toledo company's complete line of products including Janitrol unit heaters for stores and factories, Janitrol conversion burners, conditioners and gravity burners for homes, Surface Combustion heat treat furnaces for industry, and Kathabar air conditioning equipment.

Reconversion Inventory Kit

TO facilitate quick, easy reconversion inventories of industry's most widely used general purpose equipment, the Allis-Chalmers Mfg. Company announces that it will soon begin to distribute a newly prepared reconversion inventory kit, covering centrifugal pumps, V-belt drives, and electric motors. Actual condition of this equipment is in many cases unknown in this early period of reconversion, according to Allis-Chalmers surveys.

This kit, which will be distributed free, contains a set of three fact sheets, one for each type of unit, with suggestions for inventory procedure, and a set of three check lists which summarize the procedures and permit detailed appraisal of each unit.

These kits are available by request from the nearest Allis-Chalmers district office or from Dept. 561, Allis-Chalmers Mfg. Company, Milwaukee 1, Wisconsin.

(VE 45-7) "AMPLE ELECTRIC POWER" display (1) card 60" x 40" screen processed in (8) colors on heavy seasoned cardboard. Price $6.45 each, F.O.B. Chicago. Stand for same $1.35 each.

(WEW 45-7) "A LITTLE MORE PATIENCE" and "IT TAKES THE CAKE" display set including (2) displays each 30" x 40" printed in photo-gelatin process in (4) colors, sepia, black, magenta and yellow. Mounted on heavy seasoned cardboard—price $9.30 per 2-pc. set, F.O.B. Chicago. Stands for same—$1.20 each.

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....(WS-45) 4-pc. white woodstrip stand, with top and bottom supporting pieces for standing 60" x 40" Display—$1.35 each, F.O.B. Chicago.

....(WEW45-7) "A LITTLE MORE PATIENCE" and "IT TAKES THE CAKE" display set including two (2) displays, each 30" x 40" printed in photo-gelatin process in four (4) colors, sepia, black, magenta and yellow. Mounted on heavy seasoned cardboard—Price $9.30 per 2-pc. set, F.O.B. Chicago.

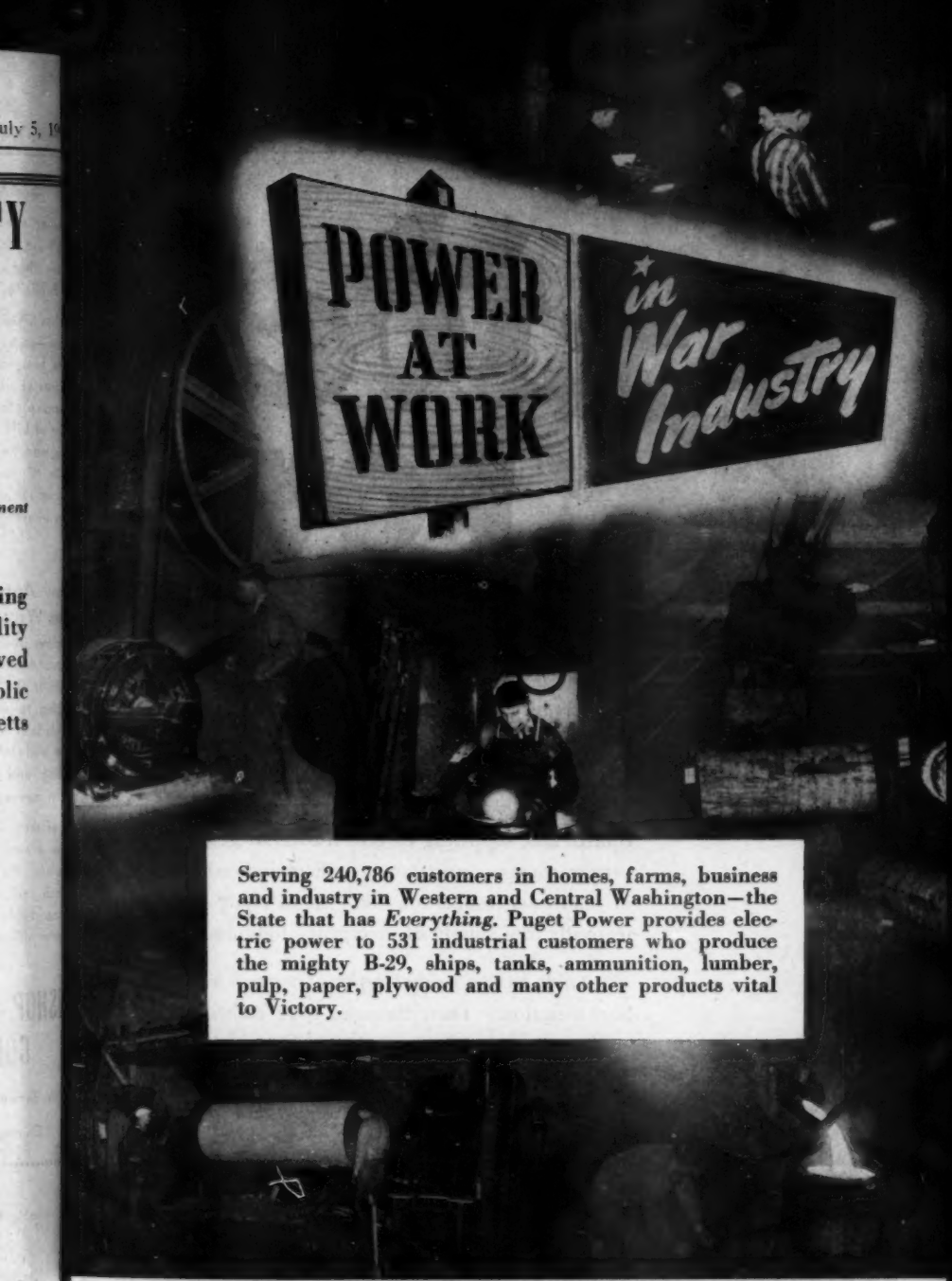
....(S-45) 3-pc. white woodstrip stands for standing 30" x 40" Displays—$1.20 each, F.O.B. Chicago.

Company..... Address.....

City, Zone No. and State.....

By..... Title.....

☐ Sending Purchase Order. Date.....



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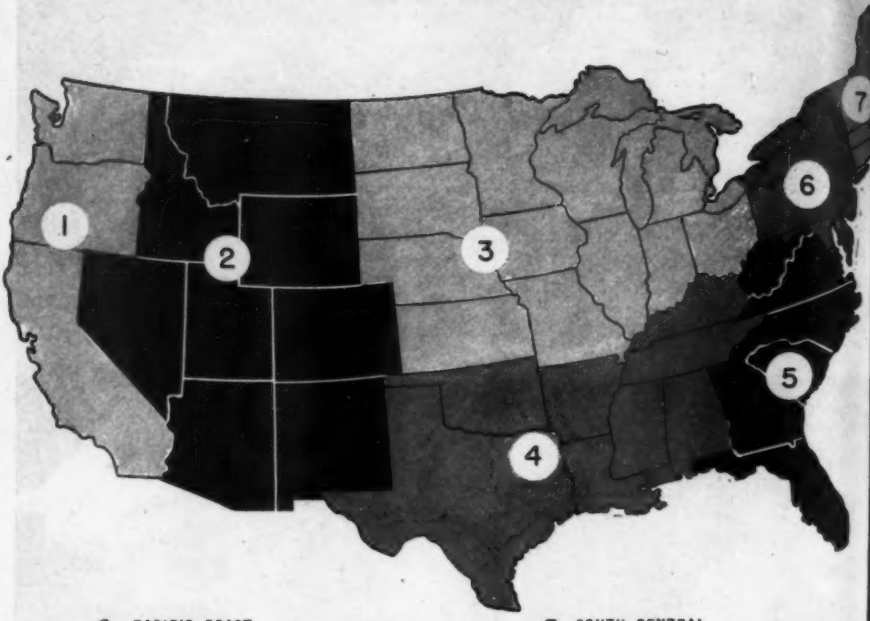
FRANK McLAUGHLIN, *President*

SEATTLE, WASHINGTON

Idaho Power Company Ownershi
By U. S. Geographical Areas



1 PACIFIC COAST
Preferred Shares 9,077
Common Shares 108,797
Total Stockholders 1,640

2 INTERMOUNTAIN
Preferred Shares 24,200
Common Shares 43,308
Total Stockholders 2,138

3 NORTH CENTRAL
Preferred Shares 2,772
Common Shares 85,512
Total Stockholders 972

4 SOUTH CENTRAL
Preferred Shares 514
Common Shares 14,742
Total Stockholders 138

5 SOUTH EASTERN
Preferred Shares 1,650
Common Shares 8,246
Total Stockholders 98

6 MIDDLE ATLANTIC
Preferred Shares 16,591
Common Shares 117,115
Total Stockholders 944

7 NEW ENGLAND
Preferred Shares 5,588
Common Shares 70,144
Total Stockholders 743

Idaho Power Company ceased to be a subsidiary of a holding company and became an independently owned public utility in 1943. With the exception of 12 stockholders who live out of the United States, owning a total of 322 shares, ownership of the Company rests with 2,385 preferred stockholders and 4,308 common stockholders as of January 15, 1945, and January 25, 1945, respectively. Residing in 47 of the 48 states and in the District of Columbia, the stockholders of the Company are widely located, as shown on the above map. They comprise individual investors, estates, trusts and endowed educational institutions.

IDAHO POWER
A CITIZEN WHEREVER IT SERVES

SPECIFY INTERNATIONAL WHEN ...the green light says "GO"

HERE'S an example of International all-truck construction on a stop-and-go traffic light maintenance job for the City of Chicago—an International K-5, powered by the famous International Green Diamond Engine, and equipped with a special canopy-top stake body.

The K-5 is but one of many International units. All can't be manufactured for civilian purchase now, but the post-war line will offer a sturdy International for every utility job—trucks designed and built without compromise with passenger car construction, to give long, dependable, economical truck service.

See the International Truck Dealer or Branch about your truck needs. Recommendations are based on *ample truck capacity and power* for the work to be done—recommendations that mean *economy, performance,* and *long, satisfactory service.*

INTERNATIONAL HARVESTER COMPANY
180 North Michigan Avenue
Chicago 1, Illinois

NEW TRUCKS: The government has authorized the manufacture of a limited quantity of light, medium and heavy-duty International Trucks for civilian hauling. But many operators will have to wait for trucks. Maintenance of existing vehicles is just as important today as before V-E Day. Therefore, be sure your trucks get top maintenance and service at International Truck Dealers and Branches. And if you qualify for a new truck, see your International Dealer or Branch for valuable help in making your application.

INTERNATIONAL *Trucks*

STILL DOING TWO BIG JOBS

. . . supplying war industries with all the electric power they want

. . . without curtailing residential delivery.

Only in a nation such as ours where profit and competition have sharpened business "savvy" and know-how would this be possible.

In other nations where business is owned or controlled by government, there is no incentive to progress . . . to bring customers more and better service at an ever lower cost.

Profit and competition in a free enterprise system have made America the best place in the world to live and work. They will make it even better.

THE MONTANA POWER COMPANY

TAX-PAYING — BUSINESS-MANAGED — INVESTOR-OWNED

It Can Be Done

Government, business, labor and agriculture pooled their resources and ability to help win one war. They are continuing in a spirit of cooperation and coordination to help win another.

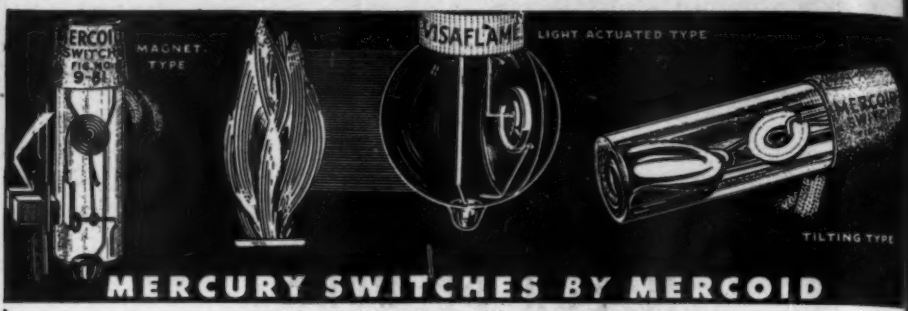
Most of the credit for winning these wars should go to the men in military service, but public officials, business, industry and labor should receive praise for the unselfish parts they have played.

We believe that this wartime example of cooperation and coordination will result in a spirit of understanding so that all will join in the common aim of preserving the opportunity which has made America great---the opportunity for a man or an organization with a constructive idea and initiative to take a chance and make a success of it if he can.

Thos. W. Martin

President

ALABAMA POWER COMPANY



MERCURY SWITCHES *BY* MERCOID

HAVE THE ENDURANCE OF PROVIDING

MILLIONS

OF "MAKES" AND "BREAKS" IN THE ELECTRICAL CIRCUIT

THEY ASSURE FULL PROTECTION AGAINST SWITCH TROUBLES

USED EXCLUSIVELY IN ALL TYPES OF MERCOID CONTROLS

DA (Double Adjustment)
Pressure Control

MEANING

BETTER AND MORE DEPENDABLE CONTROL PERFORMANCE INCLUDING MUCH LONGER AUTOMATIC CONTROL LIFE, FOR HEATING AND AIR CONDITIONING EQUIPMENT—ALSO FOR NUMEROUS IMPORTANT INDUSTRIAL APPLICATIONS

THE MERCOID CORPORATION, 4201 BELMONT AVENUE, CHICAGO 41, ILL.

GIVING EXTRA SE

Six B&W 850,000 lb. per hour Radiant Boilers of this design are performing notably at Burlington and Marion Generating Stations of Public Service Electric and Gas Company.

In New Jersey's critical war-plant areas, with their enormously increased load demands, power has never been "too little or too late." To the Electric Department of Public Service Electric and Gas Company belongs much credit for this distinguished war-time record. Its keen foresight and sound engineering in providing power-plant facilities capable of supplying war-urgent demands far beyond expectations are well illustrated by the performance of the Burlington and Marion Generating Stations.

In these two stations six Babcock & Wilcox Radiant boilers serve three 125,000-kw turbines, the first two boilers having been in service over 4½ years. Operating at their maximum guaranteed continuous rating most of the time, the load factor for the six boilers has averaged 81.6 per cent, and the availability factor 91.4 per cent, for a total of twenty boiler years.

These boilers have never suffered a decrease in capacity caused by slag troubles, even though they have burned low ash-fusion coals from three states and *many* different mines—coals entirely different from the normal supply.

Public Service engineers knew—as do so many other power engineers—that with the selection of B&W steam-generating equipment, all the advantages are realized from over 60 years' specialized experience in designing, fabricating, and applying boilers and related equipment having a long record of highly satisfactory service.

Thinking and planning for tomorrow *today* is a job that B&W engineers are ready to tackle—in partnership with your engineers—at any time.

PROFESSIONAL DIRECTORY

• This Directory is reserved for engineers, accountants, rate experts, consultants and others equipped to serve utilities in all matters relating to rate questions, appraisals, valuations, special reports, investigations, financing, design and construction.

(*Professional Directory Concluded on Next Page*)

PROFESSIONAL DIRECTORY *(continued)*

PROFESSIONAL DIRECTORY (concluded)

INDEX TO ADVERTISERS

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* Fortnightly advertisers not in this issue.

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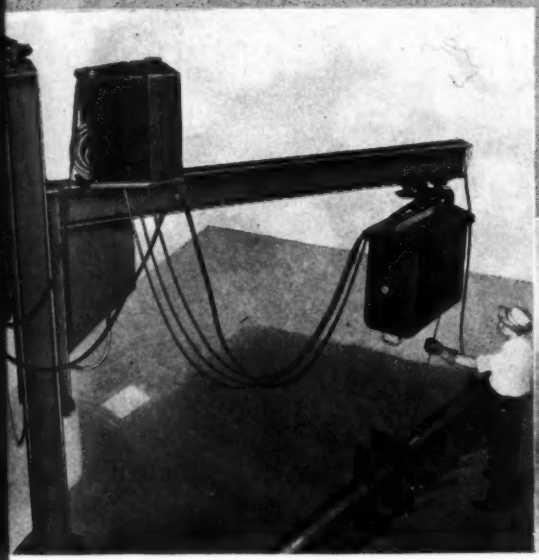
BECAUSE IT'S X-RAY INSPECTED



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GRINNELL
WHENEVER PIPING IS INVOLVED